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LOCAL TAXATION

AND

THE RATING OF MACHINERY.

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LOCAL TAXATION

AND

THE RATING OF MACHINERY,

MANUFACTORIES,

MINES, AND MINERALS.

LOCAL TAXATION

AND THE

RATING OF MACHINERY.

A REPORT ON THE RATING OF MACHINERY, WITH ALL THE DECIDED CASES THEREON, FROM 1783 DOWN TO THE PRESENT TIME, INCLUDING THE SHORT-HAND WRITER'S NOTES OF THE SPECIAL CASE, ARGUMENTS, AND JUDGMENT

IN

LAING v. The OVERSEERS of BISHOPWEARMOUTH,

AND THE APPENDIX,

CONTAINING

A DESCRIPTION OF THE MACHINERY INCLUDED IN THE SPECIAL CASE, TO WHICH IS ADDED THE PRINCIPLES OF RATING AND LETTING MANUFACTORIES, AND THE RATING OF SHAFTS AND ADITS, AND MACHINERY AND PLANT CONNECTED WITH MINES AND MINERALS,

BY

THOS. FENWICK HEDLEY,

Valuer, &c.,

SUNDERLAND AND BIRMINGHAM.

Fellow of the Surveyors' Institution; Fellow of the Statistical Society; and Member of the North of England Institute of Mining and Mechanical Engineers.

SECOND EDITION.

London:
KNIGHT & CO., 90 FLEET STREET.
1883.

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PREFACE TO THE SECOND EDITION.

TO THE

RIGHT HON. SIR CHARLES DILKE, BART., M.P.,

President of the Local Government Board.

SIR,

LOCAL TAXATION AND ASSESSMENT.

Since I addressed the preface to the first edition to your predecessor in office, in 1878, the question of the "incidence of Local Taxation" has often been before the public, and Parliament has been asked by petitions "That Bills may be introduced, whereby revenues derived by ground landlords in respect of minerals and ground rents may be rendered amenable to rates levied for local purposes in the district wherein such minerals are raised and worked, and wherein the ground rents are reserved." And "That personal property, stock-in-trade, and shipping may be assessed to the local rates."

THE RATING OF MINERAL RENTS AND GROUND RENTS.

On the 15th April, 1882, I addressed some observations to the Right Honourable J. G. Dodson, M.P., pointing out that under the existing laws the occupiers of minerals and lands held on ground rents are rateable and ought to be rated, and that no amendment of the law for rating mineral rents and ground rents is required. I also pointed out to him that whilst no amendment of the law is required, great irregularities exist in rating these and other properties to the prejudice of other occupiers; and I showed him that collieries in six unions in the County of Durham were underrated to the extent of £120,000, and that the occupiers of these collieries thereby escaped payment of local rates to the extent of £18,000 a year, which sum had been levied upon the occupiers of other properties. I suggested that the Local Government Board should issue an "Instructional Letter to the Overseers of the Poor and Union Assessment Committees," directing their attention to the following points, viz:—

1st. That no deductions be made from rents where such rents are reasonable, before entering the gross estimated rentals in the valuation lists, except where the landlords' pay out of the rents the tenants' rates and taxes.

2nd. That no deductions be made either from the gross estimated rentals or rateable values of properties for ground rents.

3rd. That no deductions be made from rents for repairs and insurance where the occupiers undertake to repair and maintain the properties; and that the cost of such repairs be added to the rents to arrive at the gross estimated rentals.

4th. That the occupiers of all mines, minerals, quarries, and brickworks be rated for the minerals and brick earth, and that no deductions be made from the royalties for repairs, &c.

5th. That the occupiers of all mines, minerals, quarries, and brickworks be rated for the surface lands, shafts,

buildings, machinery, and plant connected with mines, quarries, and brickyards, in addition to the mineral rents or royalties, except the occupiers of lead, tin, and copper mines where the royalties are reserved in money.

6th. That where outstroke and shaft rents are payable, and the underground ways and shafts connected with mines are thereby enhanced in value by such rents, the mines be rated accordingly.

7th. That where the owners of lead, tin, and copper mines reserve the royalties in kind, the owners be rated for such royalties, and the occupiers of the mines for the surface lands, shafts, buildings, machinery, and plant.

8th. That where properties are taken under the Lands Clauses Consolidation Acts, the persons taking such properties be charged with the poor's rate until the new works are completed and assessed. And the overseers ought to enforce payment of the arrears of deficiency in the poor's rate from the date of the commencement of the works to the date of the completion of the same (Stratton *v.* the Metropolitan Board of Works, 44 L. J., M. C. 33; L. R. 10 Q.B. 76).

9th. That where large reductions of rateable values are shown in the rate books, produced for audit, the district auditors be required to inquire into the causes of such reductions, and if not satisfactorily explained, report the same to the Local Government Board.

The Board have not issued an instructional letter, and great irregularities continue.

I understand the reason for not issuing such an instructional letter on the subject is "*that the Board never interferes with 'Local Assessments.'*" If any such irregularities existed in the administration of the out-door relief of the poor, or some poor persons received a few shillings contrary to the "Consolidated Orders," the attention of the Guardians would have been at once directed by the Board to the subject, and they would have been threatened with the pains and penalties of surcharges by the District Auditor!

THE RATING OF PERSONAL PROPERTY, STOCK-IN-TRADE, AND SHIPPING.

In 1878, when the rating of these properties was discussed, I directed the attention of the Right Honourable W. E. Gladstone, M.P., to the subject. The following is an extract from my letter :—

"A general opinion prevails amongst agricultural ratepayers that stock-in-trade, personal property, and shipping should again be made rateable, I have had many years' experience in the parish of Sunderland, where stock-in-trade, personal property, and shipping are rateable under a local Act to a special rate, and I can assure you that it is impossible to imagine anything more unsatisfactory than the assessment of this description of property. In fact, it is charged on a very rough estimate indeed, as it is impossible to arrive at anything like a correct basis, and the parish officers would be glad to be relieved from such a difficult and disagreeable duty, and if the exemption of rating stock-in-trade is discontinued it will soon be found impossible to assess local rates upon such property. The experience of the Courts, when this description of property was rateable, proves this beyond all doubt. In Rex *v.* Ringwood, Cowp. 326, Lord Mansfield said, 'I think the Justices would not have done very wrong if they had acquiesced in the practice which has obtained ever since the statute 43 Eliz., of not rating this species of property. If the Justices had considered, they would have found out the sense of not rating it at all, especially as it appears mankind has, as it were, with one universal consent, refrained from rating it; the difficulties attending it are too great, and so the Justices would have found them.'

"I am convinced that the continuation of the Income Tax (on account of its being inquisitional and offensive), will be found agreeable in comparison with the local authorities visiting the shops, warehouses, and manufactories, to take an account of the stock-in-trade. So disagreeable a task was

this found in Sunderland that it was abandoned, and the assessment upon stock-in-trade 'guessed at.'"

THE RATING OF SHIPS.

I found comparatively little difficulty in arriving at the value of ships belonging to the owners whose ships were registered in Sunderland, and the classes of the vessels were easily obtained, and a fair average value estimated, but this only applied to the owners residing in Sunderland.

The ships of non-residents or foreigners could not be taxed; and the result was, and is, that in the parish of Sunderland, persons who live or carry on business in the parish are rated for ships which never enter the port from the day they are launched, whilst the ships of non-residents and foreigners frequenting the port wholly escape the local rates.

I must confess I cannot see on what reasonable grounds shipping could be charged to the ordinary rates levied for the relief of the poor.

A large proportion of these rates go towards the maintenance of borough and county police and the repairing of highways, whilst shipping alone is charged for the maintenance of river police for the protection of shipping, and for the dredging of rivers and repair of piers, and lighting of the "ocean highways" used by ships.

I think as ships using ports often entail large expenses for the maintenance of sick and maimed seamen, a tonnage due, as an "hospital rate," might reasonably be levied upon every ship frequenting a port, and be applied in aid of the relief of the poor, by which means ships of all nations would contribute; whereas making shipping rateable to the local rates, the ship owner residing in England alone would pay the local rates, whilst the ships belonging to foreigners would escape.

In December, 1881, in giving evidence on Local Taxation before the Royal Commission on Agriculture, I again pointed out the difficulties of rating personal property, stock-in-trade,

and shipping, and the Commissioners in their report, after referring to Local Taxation, add—

"It is no doubt most important that expenditure for purposes which are exclusively local should be defrayed out of local resources."

Looking, however, to the difficulty of localizing a rate upon all personal property, it would seem that the equity of the case can only be met by assigning certain local taxes to the local authorities for local purposes, or by defraying some portion of local expenditure out of the Consolidated Fund.

THE RATING OF MINES AND MACHINERY.

Although this question has been settled by a long series of cases, beginning in the year 1783 down to the present time, and manufacturers admit they design their works and arrange their machinery so as to diminish manual labour, and their buildings are designed for the machinery, yet in some unions the local authorities disregard the settled law, and neglect to rate the machinery, whereby many large works are considerably underrated.

So also in rating mines and minerals, in some unions only the minerals are rated, and the surface lands, buildings, engines, machinery, and fixed plant are omitted to the prejudice of the occupiers of other properties.

The following figures show how some mines and minerals were rated, and how they ought to have been rated, viz :—

	Previous Rateable Value.	Actual Rateable Value.
No. 1	Not rated	£666
2	£16	1,007
3	360	1,263
4	457	922
5	173	643
6	14	135
7	250	914
8	—	—

DEDUCTIONS FOR REPAIRS, &c.

Many Union Assessment Committees continue to make large deductions from the rents of properties for repairs, &c., irrespective of whether such repairs, &c., are undertaken by the occupier or owner: but where the occupier undertakes the repairs, &c., no deduction should be made, and the rent paid is the rateable value (R. *v.* Wells, L. R. 2, Q. B., 542).

I am convinced many of these irregularities arise through want of knowledge, and an instructional letter, would in many cases, secure the attention of the local authorities, and the irregularities would be remedied.

THE DIFFICULTIES OF ASSESSMENT COMMITTEES.

When the Union Assessment Committee Act, 1862, came into operation the proceedings of many of the Assessment Committees were rendered abortive by the overseers coalescing with the parties whose assessments had been increased to defeat the action of the committees, either by not appearing as "respondents" to the appeals against the rates, or consenting to the rates being reduced. The Assessment Committees at that time had no power to appear as "co-respondents" to support their valuation.

I directed the attention of the then President of the Poor Law Board to the anomalous state of the law, which gave the Assessment Committees authority to alter the assessments without giving them power to support their proceedings.

The Union Assessment Committees Amendment Act, 27 & 28 Vic., cap. 39, section I., provided that no person shall be empowered to appeal to any sessions against a poor rate, made in conformity with the valuation list, approved of by such committee, unless he shall have given to such committee notice of objection against the said list, and shall have failed to obtain such relief in the matter as he deems just.

1. Section II. gives the Assessment Committee, with the consent of the Guardians, power to appear as respondents to such appeal.

Under this enactment it was considered no person could appeal against a rate to the Special or Quarter Sessions without appearing before the Assessment Committees and giving them such information as would enable them to exercise their judgment on the assessments objected to.

And, in many cases, the Assessment Committees have been able to determine the objections to the satisfaction of the parties, and by this means numerous appeals have been prevented. But the Queen's Bench Division has recently decided in R. *v.* Justices of Essex, 46 J. P., 724, that it is not necessary for persons, previous to an appeal to the Special or Quarter Sessions, to give the Union Assessment Committees any information on which to exercise their judgment, and that all that is required is to go before the Assessment Committee and say they are dissatisfied with the Assessments.

The effect of this decision is to limit the usefulness of Union Assessment Committees, and an amendment of the law on this point is now as urgently required as the amendment of the original Act of 1862.

I am, Sir, yours most respectfully,

THOS. F. HEDLEY.

Sunderland,
8th August, 1883.

PREFACE.

TO THE

RIGHT HON. G. SCLATER-BOOTH, M.P.,

President of the Local Government Board.

SIR,

LOCAL TAXATION AND ASSESSMENT.

For several years past the question of Local Taxation and Assessment has occupied the attention of both the Imperial Parliament and the local authorities, and during last year your attention was particularly directed to this subject.

For a long period the occupiers of agricultural lands have complained of the increased and increasing charges upon land for local rates and taxes, and have asked to be relieved by legislation from such increased and increasing charges; and last year's deputations from the manufacturers and mine owners also asked you to introduce clauses in the Valuation Bill then before Parliament, which would relieve them by reducing their assessments.

There is no doubt the complaints of the agriculturists are well founded, as the local taxation upon land has been enormously increased by recent legislation, whilst the local

rates on other property have been reduced. The legislation which has chiefly caused the increased local charges on land is :—

1st. The exemption of stock-in-trade and personal estates (including shipping), from taxation, to the relief of the poor.

2nd. The transfer of the cost of the relief and maintenance of the poor from parishes to the common fund of the unions, and levying the contributions to the common fund of the unions on the rateable values of parishes, instead of on the pauper expenditure of each parish.

3rd. The deductions, under the Parochial Assessment Act, from the gross estimated rentals of rateable property for repairs, insurance, and other expenses.

And to these causes may also be added the neglect, in many parishes and unions, to include a large amount of property which is legally rateable, and ought to be rated, and the underrating of other property.

The direct effect of the exemption of stock-in-trade and personal estates from taxation, to the relief of the poor, was to increase the rates upon land and other real property by withdrawing from assessment and taxation a large amount of property which had previously been rated.

And the transfer of the cost of the relief and maintenance of the poor from parishes to the common fund of unions, and levying the contributions on the rateable value of the parishes greatly reduced the rates in the urban or "town parishes," and greatly increased the rates in the rural or "country parishes."

The Sunderland Union affords a striking illustration of the changes made by these alterations in the law.

In the parish of Sunderland, an "urban parish," the poor rates for several years, prior to 1851, averaged about 16*s.* in the pound.

In the adjoining parish of Bishopwearmouth, a partly urban and partly rural parish, the poor rates averaged for the same periods only about sixteen pence in the pound.

And in the rural parishes in the union the poor rates in these years did not average above 8*d.* in the pound.

The poor rates being now nearly equalized over the whole union, the rate in the parish of Sunderland does not exceed 3*s.* 6*d.* in the pound, but the poor rates in the other parishes, particularly the rural, have been greatly increased.

The effect of the deductions made from the gross estimated rental of property under the Parochial Assessment Act for repairs, &c., also increases the charges upon agricultural lands, as smaller deductions are made from the rents of agricultural lands than from other property. The deductions vary considerable in different unions, but the usual deductions from the gross estimated rentals are from land, 5 per cent.; land and farm buildings, from 8 to 13 per cent.; houses and shops, from 15 to 25 per cent.; mills and manufactories, from 25 to 34 per cent. The effect of these deductions upon the rateable value of land is, that, in many cases, the occupiers of land at £100 a year rent are taxed on a rateable value of £95, whilst the occupier of houses and shops, at the same rent, are only taxed on £75, and the occupiers of mills and manufactories on £67. As the rates are levied on an equal pound rate, on the rateable value, the farmer pays rates on £20 more than the householder or shopkeeper, and £28 more than the miller or manufacturer. The deductions from the gross estimated rentals are made for repairs and insurances, but no landlord expends on repairs and insurance anything like the percentages deducted from the gross estimated rentals for repairs and insurance; and the unequal taxation of land is still further increased by the fact that, in rating mills and manufactories, the deductions from the gross estimated rentals are improperly and illegally made. In practice, the occupiers of mills and manufactories, which are let, undertake to repair and maintain the hereditaments, and in such cases where the rent paid is taken as the criterion of value for assessment, the rent ought to be the *rateable value*, and the cost of the repairs added to the rent to arrive at the gross estimated rental (R. *v.* Wells, 36 L. J., M. C., 109.) But in assessing mills and

manufactories, overseers generally enter the rents paid as the gross estimated rentals, and make the deduction for repairs without reference to the tenants having undertaken to repair and maintain the hereditaments. The following case will show the effect of this inattention to the law :—

The lessee of a tin-plate works pays £900 a year rent for the works, and not only repairs and maintains the works, but has expended upwards of £5,000 on improving them; in assessing the works to the poor rate, the rent (£900) is entered as the gross estimated rental from which 25 per cent. is deducted for repairs, and the works are assessed on a rateable value of £675. The lessee admits that if the lessor had made the improvements, and expended the money, he would have willingly paid 5 or 6 per cent. per annum on the £5,000, in addition to the rent of £900. Taking the rent paid, and estimating only 5 per cent. per annum on the £5,000, the rateable value of the works ought to have been £1,150 instead of £675 ; and assuming this had been a farm at £900 a year, instead of a tin-plate works, and the landlord had expended £5,000 on drainage or other improvements of the farm, the tenant would have been *rated on the rent and the interest charged on the outlay.*

It may be said the tin-plate works have been improved by the tenant, and the improvements of a farm would be done by the landlord; but in rating it is immaterial whether the improvements be made by the owner or occupier, the occupier is liable to be rated *on the improved value.* (R. *v.* Lord Granville, 9 B. & C., 188; R. *v.* Attwood, 6 B. & C., 277.)

And, in rating railways, the deductions made from the gross estimated rentals are, in many cases, simply monstrously extravagant; for instance, in the county of Hereford, I found, from the returns made by the overseers, the deductions made from the gross estimated rentals of the railways, varied in many cases from 15 to 87 per cent., and in another county I found the deductions as much as 90 per cent. from the gross estimated rentals.

In Scotland, in many parishes, the deductions from the gross estimated rentals are generally uniform over all descriptions of property, which is equivalent to making no deduction at all, as the effect of a uniform deduction is only to increase the rate in the £ levied; but in assessing agricultural lands the tenants of dwelling-houses pay the full rate assessed, and tenants of agricultural subjects only pay one-fourth or one-fifth of the rate paid on dwelling-houses; so that the farmer in Scotland pays considerably less in rates than the householders, whereas in England the farmer pays considerably more than the householder.

Then as to the other causes of the increased taxation of land, viz., the neglect to include a large amount of property which is legally rateable, and the underrating of other property; this occurs chiefly in the rating of manufactories and mines.

The Manufacturers' Deputation.

The deputation of manufacturers who waited upon you, told you that an attempt was now being made, in some places, to rate their machinery, and it was given in evidence, in the Halstead Case, that it is *not the usage or practice to rate machinery.*

From the cases quoted in the Report and Supplemental Report, which accompanies this letter, it will be seen the Superior Courts have uniformly, from Rex. *v.* Gloucester, decided in 1783, to the Phœnix Gas Case, decided in 1866, held machinery to be rateable; but it appears, in the face of all these decisions of our highest legal tribunals, the local authorities, in many cases, have disregarded the expounded law, and have *not rated machinery.*

In 1867, the law became unsettled by the Court of Queen's Bench deciding, in the Halstead case, that looms, &c., were not rateable, but in subsequent cases this decision was disregarded. You declined to introduce clauses into the Valuation Bill to exempt machinery, and recommended the deputation to get the point settled by the Superior Courts,

and this course has been taken by the manufacturers in Sunderland, who for many years have been rated for their machinery. A special case was stated last year for the opinion of the High Court of Justice, and in November last the special case Laing *v.* the Overseers of Bishopwearmouth was argued before the Queen's Bench Division. A full report of this case is also given in a Supplemental Report, which accompanies this letter.

The learned Judges took time to consider the case and arguments, and last month gave their decision, holding *machinery to be rateable.*

THE COAL OWNERS' DEPUTATION

also told you that an attempt was being made to rate their engines and plant, and they suggested that mines should be rated on the average "royalty" paid in each union, and that their engines and plant should be exempt. As regards the rateability of engines and plant connected with mines, by the Supplementary Report it will be seen the Superior Courts, many years ago, laid down the principle that shafts, buildings, engines, and plant connected with mines were rateable, and the Courts also laid down in Guest and East Dean the principle on which they were to be rated. As to the suggestion of rating mines, on the average royalty paid in each union, it would be contrary to every principle of common sense and justice to assess all mines at one rent and price per ton, and to exempt the engines, machinery, and plant would be to withdraw from the poor rates a large amount of the rateable property, which, in many districts in the North of England, has been rated for several years.

It is difficult to understand on what principle manufacturers and mine owners can reasonably ask to have their machinery exempt from contributing to the relief of the poor, as they admit their "machines no doubt reduce manual labour, and in such cases the reduction of population which follows is the able-bodied who go away," and leave the poor, old, and infirm, and unable to work, to be kept by the rate-

payers, and they also admit that their machinery cheapens production, and thereby increase their profits and their ability to pay the local taxes.

And they also admit that their machines are frequently the cause of accidents which sometimes maim men for life, or "*kill them outright*," in which cases the maimed men and their families, or the bereaved widows and their children, have also to be relieved and maintained by the ratepayers.

Under all these circumstances, machinery appears to be a most legitimate subject of taxation to the rates for the relief of the poor; and in the exemption of the stock-in-trade and personal estates from local taxation, the manufacturers and mine owners have already obtained a large and substantial reduction of their contributions for the maintenance of the poor.

As regards the underrating of other property, it is a notorious fact that, in many districts, the railways, manufactories, and mines are considerably underrated, and the local authorities will not, for various reasons, increase the assessments.

The following cases are taken from many hundreds to show the effect of the neglect to rate property which is legally rateable, and the underrating of other property.

In the Llanidloes Union, the Van Mine was opened about fourteen years ago, and was rateable under the statute of Elizabeth, but never rated until 1875, and is now rated on £8,842.

In the Houghton-le-Spring Union, Silksworth Colliery was worked for a considerable period, but neither the overseers of the parish nor the Union Assessment Committee would rate the colliery, and the colliery was not rated until the Durham County Rate Committee ordered the value of the colliery to be included in the County Rate Basis.

In the Dore Union the Great Western Railway Company were rated on £28 per mile for a double line of railway, for which the company agreed to be rated on £900 per mile.

In the Houghton-le-Spring Union, Mr. (now Sir George) Elliott was rated on £497 for Pensher Colliery, for which he was paying £3,000 a year rent. The overseers admitted *they knew the rent*, but said, "they were servants of the colliery, and could not alter the rate."

In the Newcastle-on-Tyne Union, Sir Geo. Wm. Armstrong & Co. were, up to last year, only rated for their world-renowned Ordnance Works and Blast Furnaces on a rateable value of £9,000, whilst the Government were contributing for their Ordnance Works at Woolwich to the local rates on a rateable value of £40,000.

The Elswick Works, including the engines and steam-hammers, but exclusive of all other machinery, are now rated on £10,500, but under the recent decision, in Laing *v.* Bishopwearmouth, they will be rateable on upwards of £20,000.

It is no doubt to the foregoing several causes that the taxation on agricultural lands has been and is unfairly increased, and if all property which is rateable was rated, and the deductions from the gross estimated rentals abolished, the local charges on land *would be considerably reduced.*

It has been suggested that stock-in-trade and personal estates, including shipping, should again be rated, but the difficulties attending rating stock-in-trade are too great and too inquisitorial to be again taxed to the relief of the poor, and to rate shipping would be unfair and unjust to the English shipowners. The costs, however, of Port Sanitary Authorities, which are now charged on the poor rates of the riparian parishes, ought to be borne and paid by shipowners, and the costs and expenses of such Port Sanitary Authorities could easily be collected in each port, with the River Watch, or some other local charges which are paid by all ships frequenting the ports.*

* Since writing the above, the Sunderland Port Sanitary Authority have resolved to petition Parliament for powers to tax shipping to meet the expenses of the said Authority.

PERSONAL EXPLANATIONS.

You were told by the Coal Owners' deputation that there was great difficulties in assessing mines, and that the principles adopted in the North of England, and approved by the coal trade during the prosperous times, had utterly broken down under the depressed state of the coal and iron trades, and in support of this statement, a case in Glamorganshire was quoted where the valuation of an ironworks had been reduced from £12,000 to £800. I made this valuation, and the statements made to you were "*utterly*" untrue, and contrary to the facts which were simply as follows:

I valued the Plymouth and Aberdare Works before the reaction in the coal and iron trades took place as a *current-going concern*, and several months after my valuation the works were valued on behalf of the owners and occupiers for other purposes by an eminent local engineer as *current-going works*, but the depression in the iron trade increased, and the works were closed. When the occupiers appealed against the rate made on my valuation, at the hearing of the appeal, the correctness of my valuation was never questioned; and Sir Henry James, Q.C., who appeared for the appellants, contended the works should be rated as works laid idle through the badness of trade, *on the principles I had laid down for rating blast furnaces out of blast in the Stockton Union*, and Sir H. James based all his arguments on my report to the Stockton Union Assessment Committee; and on the advice of the Solicitor-General, who appeared for the respondents, the works were rated on the rent of the land, and the value of the buildings as warehouses for the machinery, which is the principle adopted in the North of England in 1866, and acted upon at the present time.

And the coal mines in the North of England are still rated on the principles I laid down, and which the coal owners agreed to in 1873; the value of the mines have been altered to meet the altered state of trade, but the principle on which

they are rated is the same as that adopted in 1873, and which you were informed had been approved by the North of England coal trade.

I am, Sir,

Yours most respectfully,

THOS. FENWICK HEDLEY,

Valuer, &c.,

Sunderland and Birmingham.

MENTONE,

ALPS MARITIME,

15*th February*, 1878.

P.S.—This letter and the notes and Supplementary Report have been written and compiled here under great disadvantages, not having access to reports and books from which to make quotations, therefore any defects must be excused.

DURHAM UNION.

REPORT ON THE VALUATION

OF

MESSRS. HENDERSON & Co.'s CARPET MANUFACTORY,

AND THE

RATING OF MACHINERY.

TO THE DURHAM UNION ASSESSMENT COMMITTEE

GENTLEMEN,

In conformity with your instructions I proceeded to make a valuation of the land, buildings, engines, and machinery in the occupation of Messrs. Henderson & Co., Carpet Manufacturers, Durham.

In making the valuation of the manufactory I had every possible facility afforded me by Messrs. Henderson & Co., so far as the valuation related to the land and buildings, and the engines and shafting connected with their works; but they objected to my including their machinery, and they contended that their carding and spinning machines, and looms, are *not rateable*, on the following grounds:—

First, that they are not attached or fixed to the freehold; that they are, in fact, personal property, and would not descend with the freehold to the heir.

Second, that in letting the manufactory the machines would have to be valued as between the outgoing and incoming tenant.

Third, that such machinery as theirs had never before been rated, and that it was not the usage to rate similar machinery in other manufacturing towns; and that it would be unfair to tax them for their machinery.

In order to allow time for inquiry and investigation, I delayed proceeding with the valuation for several weeks, and reported to you Messrs. Henderson & Co.'s objections to my including their machinery in my valuation, and requested your instructions. In reply, your clerk instructed me to make a valuation of the land, buildings, engines, *and so much of the machinery as I considered rateable.* I have accordingly valued the land, buildings, and engines,

but I cannot complete the valuation, as in my opinion nearly the whole of the machines and looms in Messrs. Henderson & Co.'s manufactory are, on the authority of the following cases decided by the superior courts on rating machinery, *clearly rateable.*

As to the First objection, viz.:—

THAT THE MACHINES AND LOOMS ARE NOT ATTACHED OR FIXED TO THE FREEHOLD; THAT THEY ARE, IN FACT, PERSONAL PROPERTY, AND WOULD NOT DESCEND WITH THE FREEHOLD TO THE HEIR.

The following cases shew that it is immaterial under the statute of Elizabeth, whether machinery is attached or fixed to the freehold, or whether it is personal property and would not descend to the heir.

A STEEL-YARD OR WEIGHING MACHINE HELD RATEABLE.

1. R. *v.* St. Nicholas, Gloucester, Cald. 265, 1 Bott. 153. A house and weighing machine were rated at £40, the house without the machine was worth £5, to which sum the Sessions reduced the rate. It was argued that the machine was not part of the house, and that it was not even stated to be *fixed to the freehold;* that the case did not *instance* any *similar machine* having ever been rated, and that it would be extremely dangerous and even ruinous to trade to encourage any such attempts; as, upon the *same principle, the profits of weaving machines,* and of every other mechanical invention, must necessarily be subjected to taxation. The Solicitor-General, in support of the rate, insisted that if property of any character or denomination is, by any collateral circumstances or appendages, made more valuable, there can be no reason that it should not be charged to every public burthen. That the machine and house were substantially the same thing. Lord Mansfield said, "What is the house? It is the 'machine house;' they are one entire thing, and are together rated. The steel-yard is the most *valuable part of the house,* which may be said to be built for the steel-yard, and not the steel-yard for the house." Willis, J., said, "There does not seem to have been any doubt below but that the machine was appurtenant to the building;" and he added, "If a billiard table stands in a house, and the house should, in respect of such table, let at a higher sum, it is rateable at the advanced rent." The order of Session was quashed, and the rate affirmed on the full amount.

A CARDING MACHINE HELD RATEABLE.

2. R. *v.* Hogg, Cald. 266. Hogg was rated to the relief of the poor for a building called "the engine house." The building was about eighteen feet long, and nineteen feet wide, in which there was a "*carding machine*" for *manufacturing cotton.* The engine was not *fixed* to the premises, but capable of being moved at pleasure. The building without the machine was worth two guineas per annum, for which appellant was willing to be rated. The building and machine together were rated at £36. There were in the same building two other machines, one for carding and the other for tumming cotton. Ashurst, J., said, "It is not stated negatively that this engine is not in some way or other fixed to the house. It is only stated that it is not fixed to the floor, but it may be fixed to the walls without being fixed to the floor. This case comes directly within the case of St. Nicholas, Gloucester." Buller, J., said, "It is objected that the property is distinct in its nature, that the building and the engine are not the same because the *former* would go to *the heir*, and the latter to the *executor.* I think the objection perfectly immaterial here. If the property is rateable it is immaterial to whom the property belongs. Counsel for appellant objected that this is a rate on manufacturers. I agree that it is so; yet it is not a rate on labour, but on the produce of labour, and the produce of labour is rateable. What a person may acquire in a profession is not *eo nomine* rateable, but if with his profits he purchase land, &c., that may be rated. Therefore, in questions of this kind, we are not to go into the manner in which property may have been acquired. The question ought always to be whether the thing which exists is to be rated? In this case the house and engine are let together. Upon this ground I am also of opinion that the rate is good." Grose, J., said, "The property in question is an engine-house, fitted up with this engine in it, and all let together under one lease. . . . The engine is let as part of the house, and the rate is upon the engine-*house.* Now, by the express words of the 43 Elizabeth, c. 2, s. 1, every occupier of land, houses, &c., is liable to be rated. Suppose the owner of a tenement which unfurnished would let only for a trifling rent, *fitted it up as a malt-house, and put a malt mill into it,* and then let the whole together, *the whole must be estimated together.* As to the argument of its being property of different kinds, and that part would go to the heir and part to the executor, it does not prove that the house ought not to be taxed at the sum at which it is let, but attempts to prove that it should

be taxed at the sum for which it would be let if there were no fixtures. This case is not to be distinguished from the case of St. Nicholas, Gloucester."—Rate confirmed.

A RATE QUASHED BECAUSE ENGINES AND MACHINERY WERE NOT RATED.

3. R. *v.* Birmingham and Staffordshire Gas Light Company, 6 A. & E. 634, S. C. 1, N. & P. 691. 6 L. J. R. (N. S.) M. C. 92. *

The Gas Company appealed against the valuation of the parish of Birmingham on the ground "That many persons were occupying houses or buildings to which pipes, steam-engines, and various other *machinery* for carrying on their trades were affixed. The houses and buildings with all the masonry and brick-work for boilers, vats, and chimney stacks, were included. But the steam-engines, machinery, and apparatus used for the purpose of manufacturing, whether fixed or not, were excluded from the valuation."—The Sessions confirmed the valuation. But Lord Denman said, "This rate is bad. . . . It is expressly found that houses to which machinery is attached are not rated according to the increased value arising from machinery. Such machinery constitutes a mode of occupying that really is clear from the beginning to the end of all the cases on this subject, and even where the machine has *not been attached*, a house has been held rateable in respect of it."

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*Gas Works rateable for what they would let for to carry on the same Business.

In R. *v.* Birmingham Gas Light Company, 1 B. & C. 506. It was admitted the company derived considerable profit from the manufacture and sale of coke and gas. The stock-in-trade and profits of other manufactories in the parish of Birmingham were not rated to the poor. Held the company were not rateable to the amount of the profits of their trade, but for a sum equal in amount to that for which the premises would let to other persons willing to carry on the same trade.

Pipes laid in the Ground held Rateable.

R. *v.* Brighton Gas Company, 5 B. & C. 466. The mains or pipes were assessed at £40 per annum, being a ninth part of the estimated value of £360, that being the proportion in which other property is there rated. Personal property is not rated in Brighton. The mains and pipes were worth £360 a year at the least to any person who could use them for the purpose for which they were laid down. Bayley, J., "The only question is whether the company can be deemed occupiers of land, and to the extent to which they are rated. If it were doubtful in this case whether the pipes constituted part of the freehold, the company would at all events be liable to be rated for an occupation way, but I think that we may collect from the case that the pipes are fixed to the soil, and if so, then R. *v.* the Corporation of Bath establishes that they are to be deemed occupiers of that land in which the pipes are fixed. R. *v.* the Rochdale Water Works Company *(infra)* and R. *v.* Birmingham Gas Light Company establishes the same principle . . . . . I entertained some doubts at one time whether the right of the company to remove the pipes might not prevent their not being rateable in respect of the increased value of the land, but upon reflection it appears to me that that makes no difference because they must be rateable upon the same principle as buildings are which may be removed at the end of the term."

REAL PROPERTY TO BE RATED ACCORDING TO ITS VALUE, COMBINED WITH THE MACHINERY ATTACHED.

4. R. *v.* Guest and others, 7 A. and E. 951, S. C. 2, N. and P. 663. 7 L. J. R. (N. S.) M. C. 38. The appellants objected to the amount of the rates upon their iron works, because several engines and other machinery used for working iron mines, and also several engines and other machinery used in the process of manufacturing iron from ironstone were not fixed to the freehold, so as to be regarded in law as real property rateable to the relief of the poor, and personal property was not charged to the poor rate.

The mode of erecting such engines and machinery was proved to be as follows :—"The soil was excavated and strong walls of masonry built; into these walls were introduced balks of strong timber, secured by bolts to an iron platform, upon this were placed frames of wood and iron. The engines and machines were attached to these frames by cotterells, or keys and jibs, so as to be tightened or slackened, or removed at pleasure, without injury to the machinery, buildings, or soil, and without displacing any part thereof."

As to such of the engines as were applicable to working the iron mines, the Sessions allowed the objection, as it was held in R. *v.* Bilston, 5 B. and C. 851, and Dowl and R. 734, that the exemption of all mines, except coal mines, extended to engines used in the mining processes, but the Sessions confirmed the rate as to the engines and machinery used in the process of manufacturing iron.

In support of the order of Sessions, it was contended that the Court would not inquire as to whether the fixtures were such as would go to the heir or executor, or at the expiration of a lease, to a landlord or tenant. On the contrary, it was contended that the engines and machinery, which were rated were personal property, and ought not to be included in the rate, as those articles would have gone to the executor, and not to the heir. Lord Denman said, "We can only direct that the rate should finally stand on the general principle which we have had occasion to lay down, that real property ought to be rated according to its actual value, as combined with the machinery attached to it, without considering whether the machinery be real or personal property, so as to be liable to distress or seizure, under a writ of *fi. fa.*, or whether it would descend to the heir or executor, or belong, on the expiration of a lease to the landlord or tenant.*

* In R. *v.* Castleton, 33 L. J., (N. S.) M. C. 179, it was held machinery even if not attached to the soil would affect the yearly value.

CRANES, STEAM-ENGINES, SHEARS, DERRICKS, AND DOLPHINS, HELD RATEABLE.

5. R. *v.* Southampton Dock Company, 15 J. P. 145. The company contended that certain fixtures, or fixed plant, consisting of cranes, steam-engines, shears, derricks, dolphins, and other large ponderous machinery attached to the freehold and essential to the business of the company, should be taken into account, in estimating the rent, as fixtures for which a tenant would be required to pay on taking possession of the premises demised, and ought to be treated as personal stock in the nature of stock-in-trade, and part of the capital which a tenant would have to invest in the business. And the Sessions found, as a fact, that the fixtures in question were attached to the freehold, but were capable of being detached from the freehold as easily and with as little injury to it as other fixtures put up for the purpose of the trade or business of the tenant, and usually valued as between an incoming and outgoing tenant. Lord Campbell, C. J., said, "This is a rate upon the buildings to which those machines are attached for the purpose of trade; and it has been solemnly decided that such real property ought to be assessed according to its actual existing value as *combined with the machinery*, without considering whether the machinery be real or personal property, or whether it be liable or not to distress or seizure under a *fi. fa.*, or whether it would go to the heir or executor, or at the expiration of a lease to the landlord or tenant. R. *v.* Birmingham Gas Company, and R. *v.* Guest, are expressly in point. And it was added, 'the point has long been settled.'"

LEADEN CHAMBERS CONNECTED WITH CHEMICAL WORKS, HELD RATEABLE.

6. R. *v.* Haslam and Howarth, 15 J. P. 642. The Sessions (subject to the opinion of the Court of Queen's Bench) confirmed a poor rate on the occupiers of certain chemical works, subject to such rate being reduced if the appellants ought not to be assessed in respect of certain leaden chambers, which chambers were placed upon the land in the open air. A circular hole was cut into the chamber, through which a pipe was inserted; when this pipe was withdrawn the chamber rested upon the ground by its own weight, and if sufficient force were used might be lifted from the soil without displacing any part of the freehold. It was also proved that personal property was not rated in the township to the relief of the poor.

In support of the order of the Sessions the cases already quoted were referred to. For the appellant, it was contended that these chambers were neither literally nor substantially freehold; that they were more like the stock of an ordinary trader or the retorts of an analytical chemist; that they were mere large pans, and might be compared to the chairs and tables of a furnished house.

Patteson, J., said, "We think it unnecessary to ascertain the fact whether the chambers erected on the premises of the appellant are or are not *affixed* to the freehold, because we are all of opinion that the rateable value of the premises is undoubtedly increased by the use of these chambers." The learned judge referred to the decisions in R. *v.* Guest, R. *v.* the Birmingham Gas Company, R. *v.* the Southampton Dock Company, and added, "Upon the argument the attempt was rather one to show that these chambers did not come within the principles laid down than to attack the principle itself, and to persuade us that the chambers were to be considered rather as moveable utensils and furniture of a dwelling-house than fixtures. Upon the facts stated it is plain that they are not like fixed machinery attached to buildings. Still they are, in some sense, attached to the land, and it cannot be denied that if the appellants were to underlet the premises they would, in their present condition, fetch a higher rent than could be obtained for them if the chambers were removed."

TELEGRAPH POSTS AND WIRES HELD RATEABLE.

7. R. *v.* the Overseers of Salford, 19 J. P. 375, p. 31. The Electric Telegraph Company appealed on the ground that they were not rateable, that in fact they had a mere easement. Sir Fitzroy Kelly argued for the appellants that "the posts and wires are not the subject of a rate;" that the company had only the licence from the railway company *to fix their* posts, which was revocable at pleasure; that it was not necessary for the purpose of carrying the wires that the posts should be *inserted* in the ground; that they might be made *to rest upon* it by having a broad base, or by merely being let into sockets. Sir F. Kelly quoted R. *v.* the Chelsea Water Works Company, 5 B. and A. 156, in which case it was held that the company "were clearly rateable for their pipes in the Green Park, although the ranger was rated for the herbage, which did not prevent others from being rated for the soil beneath," and it was conceded if the

wires were carried underground in pipes they would be rateable. Pollock, C. B., said, "In my opinion there is no distinction between a case in which the wires are carried through the air from one fixed point to another by means of posts inserted in or *resting* on the soil, and that where they are buried underground. The case appears to me free from doubt. I do not think it could make any difference if the posts were so made that they *would rest* on the surface of the ground without being *fixed* on it. It seems to me that there is a profitable and exclusive occupation, and that the company are rateable." Alderson, B., concurred, and said, "There can be no distinction between the electric fluid and water being carried through a parish, or whether it is conveyed by pipes underground, or wires above ground." Platt, B., concurred, and added, "That it had been said that the posts need not be inserted in the ground, and the case was put of their merely resting upon it, or being introduced into sockets. Assuming that to be so, it would, I think, make *no difference*, the appellants would still be rateable." Martin, B., also concurred, and added, "It was urged that the railway company had the right of removing the posts at any time, but that merely shows that they are tenants at will, and according to R. *v.* the East London Water Works Company, 21 L. J., M. C. 174, that does not prevent their being liable in that case." Lord Campbell, in delivering judgment, said, "This company derives benefit from the operation of the Paving Commissioners, *and though the situation of their pipes may be altered by the Commissioners*," still wherever their pipes are, the company are in the lawful occupation of the soil. That is a case directly in point."—Rate confirmed.

TURN-TABLES, CRANES, WEIGHING MACHINES, STATIONARY ENGINES, AND LATHES, HELD RATEABLE.

1. R. *v.* the North Staffordshire Railway Company, 24 J.P., 821. The company contended that they were entitled to a deduction in respect of the interest of capital and tenants' profits upon the capital value of the turn-tables, cranes, weighing machines, stationary steam-engines, lathes, electric telegraph and apparatus, office and station furniture, and gas works which they had to provide. The turn-tables and some of the weighing machines were affixed to the freehold by means of an iron hand inserted in a large stone sunk in the land, the

lathes and steam-engines were connected with the buildings by means of iron bolts. The electrifying machines were in no way affixed to the freehold.

The gas works consist partly of buildings and partly of gas meters, retorts, and the usual plant for making gas, and pipes for conveying the same. Other weighing machines and office furniture were unconnected with the freehold. Cockburn, C.J., said, "The articles to which this question has reference may be divided into three classes. Firstly, things removable, such as office and station furniture; secondly, things so attached to the freehold as to become part of it; and thirdly, things which, though capable of being removed, are so far attached as that it is intended they shall remain permanently connected with the railway, or the purposes connected with it, as certain permanent appendages to it, and essential to its working. It is clear, in respect of the first class of articles, a deduction should be allowed (*i.e.*, that such are not rateable), it is equally clear that no deduction should be allowed as to the second. As to the third, the question is finally settled by the decision of the Court in the case of R. *v.* the Southampton Docks, 14 Q. B., 587," (*i.e., that such things are rateable*).

MACHINERY AFFIXED TO THE SOIL, MUST BE TAKEN AS BUILT INTO IT, AND EVEN IF NOT ATTACHED TO THE SOIL IT WOULD AFFECT THE YEARLY VALUE.

9. R. *v.* the Overseers of the Poor of Castleton, 33 L. J., (N.S.) 179 M. C. The question in this case was the rateability of a mill out of work by reason of the badness of trade. The Court decided that the mill was rateable only as a warehouse for the machinery. During the argument, Blackburn, J., said, "The rate must be made upon the rent which could be obtained for the mill, as enhanced by the capacity for using the machinery of a cotton mill." And, in the judgment, he said, "If any of the machinery referred to was affixed to the soil so as to become part of it, we must take it as if it were permanently built into it, and even if it *were not attached to the soil it would affect the yearly value.*"*

* R. *v.* Guest and others, 7 L. J. R. (N. S.) M. C. 38, "held rate should finally stand on the general principle we have had occasion to lay down, that rea property ought to be rated according to its actual value, as combined with the machinery attached to it without considering whether the machinery be real or personal property, so as to be liable to distress or seizure under a writ of *fi. fa.*, or whether it would descend to the heir or executors, or belong on the expiration of a lease to the landlord or tenant."

NO ALTERATION MADE IN THE LAW OF RATING BY THE PAROCHIAL ASSESSMENT ACT, 6 & 7 WILL. IV. c. 96.

It has recently been contended that the first four cases quoted do not apply, as they were previous to the passing of the Parochial Assessment Act, 6 & 7 Wm. IV. c. 96, by which Act it was intended to repeal so much of the statute of Elizabeth, as rendered personal property rateable. This point was raised in R. *v.* Lumsdaine, 2 P. and D., 219 S. C., and L. J. R. (N. S.) M. C. 69, in which case, Lord Denman said, "The object of this new statute (*i.e.*, 6 & 7 Wm. IV. c. 96) appears to have been to establsh a new mode and not any new principle of rating." Littledale, J., said, "The 6 & 7 Wm. IV. c. 96, cannot be considered a declaratory Act; it contains no declaration whatever respecting the first class of persons rateable under the statute of Elizabeth." Paterson, J., said, "As to the 6 & 7 Wm. IV. c. 96, I doubt much whether any alteration in the law was intended as to rateability of personal property; certainly none has been made." And in R. *v.* the London and South Western Railway Company, 11 L. J. R. (N. S.) M. C., Lord Denman asked, "Has then the Parochial Assessment Act made any difference? Now, without having recourse to the express language of the proviso, it is clear that the enacting part introduced no new principle of rating." After these judgments, an Act, (the 3 & 4 Vict. cap. 89), was passed to exempt inhabitants of parishes, &c., from liability to be rated as such in respect of stock-in-trade and other property to the relief of the poor. The proviso to the Act provides that nothing therein contained shall in anywise affect the liability of any person, &c., or the occupier of lands, *houses*, &c., to be taxed for and towards the relief of the poor. It must be observed that the Courts never treated engines and machinery as *stock-in-trade*, but as appurtenant to the hereditament, and as part and parcel of the *house;* this was expressly held, as before quoted, in R. *v.* St. Nicholas, Gloucester. The machine and house are one entire thing and rated together; and in R. *v.* Hogg, "the carding machine is let as *part of the house*, and the rate is upon the engine-*house*, and by the express words of the statute every occupier of *houses* is liable to be rated;" and in R. *v.* Attwood and others, it was held, "when a tenant expends money in making a mine more productive (*i.e.*, by the erection of a steam-engine), it was analogous to expending money on a farm or a *house*, in which case the tenant is

rateable for the improved value." And all doubt on this point is removed by the judgment in R. *v.* the Southampton Dock Company, which case was argued several years after the passing of the Acts 6 & 7 Wm. IV. c. 96, and 3 & 4 Vict. c. 89. Lord Campbell said, "In this last case," referring to R. *v.* Guest, "all the arguments pressed on us to show that fixtures are stock-in-trade, and not to be taken into account in a rate on realty, was urged, but urged in vain," and the rate on machinery was confirmed.

As to the Second objection, viz.:—

THAT IN LETTING THE MANUFACTORY, THE MACHINERY WOULD HAVE TO BE VALUED AS BETWEEN THE OUTGOING AND INCOMING TENANT.

In R. *v.* Lord Granville, 9 B. & C., 188, it was found, "the defendant some time since erected several steam and other engines in the colliery, which are used solely in draining the mine and raising the coals to the surface, he also laid down a railway, which is solely employed in facilitating the carriage of the coals." Bayley, J., "I have no doubt that the defendant ought to be rated for his engines and railway . . . . . If the owner had occupied the mine he would have been liable to be rated according to the improved value of the property, and when the owner of a mine fixes an engine, or otherwise, by expenditure of his capital raises the value of his property, he will be rateable for the value of the property so improved by his expenditure. If it be leased to a tenant who incurs the same expenditure of erecting an engine the owner will receive a less royalty . . . . and, I think, the tenant being the occupier is liable to be rated for such improved value." Littledale, J., "It is immaterial, with reference to rateability, whether the landlord or tenant erect an engine or lay down a railway. The bargain between the landlord and tenant may be varied on that account, but the occupier of the property is rateable in respect of its improved annual value." Parke, J., "The question left to us is whether the defendant be liable to be rated for improvements. I think he clearly is . . . . . The only question for us, however, is whether it be right in principle to rate the lessee in respect of an annual value increased by reason of improvements made by himself. I think he was properly rated for the improved value."

And in R. *v.* Guest and others, 7, L. J. R. (N.S.) M. C. 38, it was held "machinery was rateable whether it belong on the expiration of a lease to the landlord or tenant." *

WHERE A TENANT PAYS RENT FOR PART OF A PROPERTY, AND PURCHASES THE FIXTURES, HELD, HE IS RATEABLE FOR THE WHOLE.

* This point was fully discussed in the Court of Queen's Bench, in the Phœnix gas case. Where it was found in the 18th paragraph of the case—that an incoming tenant would have to purchase the fixtures and plant. It was held, Cockburn, C. J., "We must look not to the position of the actual tenant, as to whether he has had to pay so much additional money down for the machinery and fixtures which are necessary for the working of the concern, but we must look to see what, as the whole concern stands, would be the rent that an imaginary tenant would give for the thing as a whole." Blackburn, J., "It was although in point of fact, as stated in the 18th paragraph of the case, the person who actually did occupy would not pay rent for portions of the property which are fixed to the rateable premises, so as to become part of it, which would be capable of removal because instead of paying rent he would purchase them."

Lush, J., "Now I apprehend that the premises to be rated are to be taken as they are, with all their fitting and appliances by which the owner had adapted them to a particular use, and which would pass as a part of the premises by demise of them to a tenant . . . . . Now, applying that rule, I cannot entertain a doubt that, with the exception of the meters, all the subjects of discussion here would pass as a necessary part of these premises. Without the retorts, purifiers, the steam-engines, and the gas-holders, the premises would be worthless for the purpose for which these things were erected—they would not be a gas manufactory at all . . . . The finding is, 'That according to the practice and course of business in letting and hiring gas works the tenant would have to take to, and find capital for, all the property comprised under the head, meters, retorts, tenant's fixtures and utensils . . . .' It struck me at first, that being so, the tenant would be bound to take these premises without making an outlay by purchasing all these articles, and the rent he would pay would be so much less, and that rent would represent the rateable value. Upon consideration, I quite agree with my brethren, and I am satisfied that that is not the right view, on the hypothesis that all these things except the meters do form part of the rateable subject, and ought to be taken into consideration in estimating the rateable value; because, if a landlord and tenant agree, the landlord before the place is let agrees that the tenant should pay down a price for part, that is, purchase part of the freehold, to say that the rateable value would be diminished would be absurd. I quite agree with my brethren, therefore, that it makes no difference at all whether the tenant takes the whole, assuming he did, or whether by contract between him and the landlord he purchases the fixed plant, which, if not so purchased, would be a part of the permanent premises."

WHERE THE LESSEE COVENANTED WITH THE LESSOR TO LAY DOWN MOORINGS, AND THE LESSEE PAID ALL THE COSTS—HELD, THE LESSEE WAS RATEABLE AS THE OCCUPIER.

In Cory *v.* Bristow (in the Court of Appeal), 40, J. P., p. 308. The conservators of the river Thames, being owners of the soil and bed of the river, gave C. permission to lay down moorings for two coal derricks, subject to conditions, and with power to order their removal at any time if deemed expedient.

To make the moorings good two holes seven feet deep in the bed of the river were made for anchors attached to cables, which held the derricks firmly. Under statutory powers the commissioners could order their removal on a week's notice.

Instead of themselves laying down the moorings contemplated by the said resolution, the plaintiffs caused and procured the necessary work to be done by the workmen of the said conservators, and paid the said conservators the whole of the costs and charges of the materials and labour expended in and about the same.

Held (reversing judgment) that the derricks were liable to be rated to the poor, for they exclusively occupied a part of the river. The House of Lords confirmed this decision of the Court of Appeal, which overruled the decision of the Court of Common Pleas.

THE RATEABILITY OF THE MACHINERY IN MESSRS. HENDERSON'S MANUFACTORY.

In my opinion, the foregoing cases prove beyond all doubt that the carding, spinning, and other machines and looms, forming part of Messrs. Henderson & Co.'s carpet manufactory, are clearly rateable, and that it is immaterial whether such machinery is or is not affixed to the freehold, or whether it is real or personal property, or whether it would go to the heir or executors, or whether it would be liable to distress or seizure under a writ of *fi. fa.*, or whether in letting the manufactory such machinery would have to be valued as between an outgoing and an incoming tenant, as it must be admitted that the buildings were specially designed and built for such machinery and looms, and that the machinery and looms are intended to remain permanently connected with and are permanent appendages to the said carpet manufactory, and essential to its working. And that it must also be admitted that if the said carpet manufactory was to be underlet in its PRESENT CONDITION with all the machines and looms as they now stand in it, that (like the chemical works with the chambers) it would fetch a higher rental, with such machinery and looms, than if they were removed, and therefore their first objection to the machinery being included in the valuation is untenable.*

As to the Third objection, viz.:—

THAT SUCH MACHINERY AND LOOMS HAVE NOT BEEN RATED BEFORE, AND ARE NOT NOW RATED IN OTHER MANUAFACTURING TOWNS, AND THAT IT WOULD BE UNFAIR TO TAX THEM FOR THEIR MACHINERY.

As to the first part of this objection that such machinery has not been rated before. The Court said in R. *v.* the East London Water-works Company, 15 J. P. 752, "The fact that they have not hitherto been rated *is of no consequence.*† And as to the second part,

* R. *v.* Birmingham and Staffordshire Gas Company, by 6 A. & B., 634, held, gas works must be rated on an amount equal to that which they would let for the person willing to carry on the same trade.

R. *v.* Hogg, Cald. 266, held, if the owner of a tenement fitted it up as a malt-house and put a malt mill into it, and then let the whole together, the whole must be estimated together and . . . R. *v.* Phœnix Gas Company, Mr. Justice Lush, said as to the rating of gas works, "Without the retorts, purifiers, steam-engines, and the gas-holder, the premises would be worthless for the purpose for which these things were erected, they would not be a gas manufactory at all."

† In the case of the poor of Whickham Freeman, 419. 3 Keb., 540, there was a toll that time out of mind had never been taxed to the poor, and the question was whether it could be now taxed by the statute 43 Elizabeth? The Court held that it might.

Messrs. Henderson & Co., have obtained information from Leeds, Halifax, Kidderminster, Keighley, Bradford, and Bramley; from which it appears that the steam-engines and shafting alone, are rated in these towns, and that carding, spinning, and other machinery and looms are not rated.

I have also obtained information from Salford, Derby, Coventry, Manchester, Rochdale, and Glasgow, and the same practice prevails in these towns in respect to rating engines, machinery, and looms, viz.,—that the engines and shafting alone are rated, *and that the carding and spinning machines, and looms are omittcd.*

BUT USAGE OR PRACTICE CANNOT BE ATTENDED TO.

On referring to the decisions as to local practices and usages in respect to rating, I find in R. *v.* the Churchwardens of Andover, 1 Bott. 133, Lord Mansfield said, "It would be material to state what has been the custom of rating in the parish." And in R. *v.* Hill, 1 Bott. 137. The case was referred back to the Sessions to state what was the usage in rating. And in R. *v.* Gardner, 3 Cowp. 79, Lord Mansfield said, "The usage under the statute of 43 Elizabeth, c. 2, is very material to avoid overturning settled practice," and again in R. *v.* Ringwood, 1 Bott. 233, Cowp. 326, Lord Mansfield said, "I think the justices would not have done very wrong if they had acquiesced in the practice of not rating this species of property."

These decisions, however, refer to rating "*stock-in-trade*," which was found by the courts in R. *v.* the Justices of Canterbury, 1 Bott. 112, almost impossible to rate, "as it was scarcely practical to ascertain their true quantum." And in R. *v.* Ringwood, 1 Bott. 126, Lord Mansfield said, "It appears that mankind has, as it were, with one universal consent, refrained from rating it, *the difficulties attending it are too great.*"

But no such difficulties attend rating machinery, as the present value can be ascertained with as much ease and correctness as the value of land and buildings; and, as previously proved, machinery was *never treated* as "stock-in-trade," therefore usage does not apply. This point was expressly decided in R. *v.* Hogg, 1 Bott. 174, on the question of rating machinery; Gorse, J., said, "It has been argued that this rate cannot be supported, because it has not been the usage in Ribchester to rate personal property. But we are interpreting a

universal law which cannot receive different constructions in different towns. It is the general law of the land that this kind of property should be rated, and we cannot explain the law differently by the usage of this or that particular place." He added, "As to usage, I am clearly of opinion that it ought not to be attended to in construing an Act of Parliament, which cannot admit of different interpretations." And again in R. *v.* the Southampton Dock Company, Lord Campbell said, on the question of rating machinery, "It is of the greatest importance that the rule upon such a subject, which has been laid down and acted on, should be adhered to, and we see no reason why this rule should now be departed from."

UNFAIRNESS OF RATING MESSRS. HENDERSON'S MACHINERY.

It may be "unfair" to rate Messrs. Henderson & Co., for their machines and looms, whilst similar machinery is exempt in other towns with which they, as manufacturers, have to compete; at the same time, it must be admitted that it must be equally "unfair" to omit Messrs. Henderson & Co.'s machinery from the valuation and to continue to charge iron manufacturers on their "machinery," chemical manufacturers on their "large pans," and railway companies on their "lathes."

I am convinced that Messrs. Henderson & Co., only require to be satisfied that their machinery *is rateable*, and their objections will be withdrawn.

I must remark that the valuation of these works, so far as I have made them, and also the valuations of the Sherburn and Brancepeth collieries in your union, made by Mr. John Taylor and myself, are based upon the assumption that all the lands and other buildings within the union are rated at their full annual value. In the report of the proceedings at one of your recent meetings, I find that you agreed, in reference to rating land, to consider the amount of tenants' profits, and that the land in your union was not rated for its increased value by reason of drainage works. In respect to the first proposition, I must remind you that it has been "solmenly decided" "that nothing should be deducted for tenants' profits, for calculating the property at a rental (as in the case of farms), it is supposed that a tenant would take the profits into his own calculation." And as to the second, in R. *v.* Gardener, 1 Bott. 123, the Court held that the rates must be according

to the value of the thing rated, and the duties *increase* according to the increase of agriculture or improvement." The land ought, therefore, to be rated at its increased value as enhanced by the expenditure on drainage works, if such drainage would induce a tenant to give an increased rental for the land, in the same manner as if a like sum had been expended on the said land for buildings, machinery, or the plant of a manufactory.

I am, Gentlemen,
Yours respectfully,
THOMAS FENWICK HEDLEY,
Valuer, &c.

SUNDERLAND,
15th January, 1866.

RETORTS, GAS-HOLDERS, PURIFIERS, AND ENGINES OF GASWORKS HELD RATEABLE.

ANOTHER IMPORTANT DECISION ON RATING MACHINERY.

NOTE.—Since writing the foregoing report, I find by the *Times* of the 18th inst. that the case of the Phœnix Gas Company *v.* the Parish Officers of Lewisham was heard, in the Court of Queen's Bench, on the 17th. The questions before the Court were, "as to what portions of the fixed works of the company were rateable, comprising, as they do, gas-holders, purifiers, retorts, engines, and meters, &c." The pipes being admitted to be rateable.

After a lengthened argument,

The Lord Chief Justice pronounced judgment as to the retorts, gas-holders, purifiers, and engines in favour of the parish, they being, in his view, permanently attached to and connected with the premises and enhancing their value, and therefore rateable; but as to the meters, which were movable and were chattels, he held in favour of the company (*i.e.*, that they were not rateable).

The other judges concurred.

This judgment decides and settles the only point that I consider was left open to dispute in rating gas and water works. In my reports on the several valuations of gas and water works which I have made, I stated that, "in the absence of an express decision by the English Courts on the question of meters, I have treated them as tenants' stock, and allowed interest and tenants' profits thereon." I am glad to find that the judgment in this last case confirms the correctness of what I have done.

T. F. H.

Sunderland, 20th January, 1866.

The case to which the foregoing postscript refers was not at the time I wrote the note fully reported. The following is the report of the case from 18 L. T. R., (N. S.,) 704 :—

REG. *v.* THE INHABITANTS OF LEE.

GAS WORKS—PRINCIPLES OF RATING—DEDUCTIONS.

(Argued in the Court of Queen's Bench, Jan. 17, 1866).

The Phœnix Gas Company were rated to the poor rate of the parish of Lee in respect of the occupation of land by their pipes; and, upon appeal, they claimed deductions in respect of their meters, retorts, purifiers, steam-engines, boilers, and the gas-holders. The meters were supplied by the company to each consumer upon his premises, and were their property. The other articles above enumerated were such as are ordinarily found and used in gas works, and such as a tenant carrying on such works would have to take to, and find capital for working. The Sessions allowed deductions for all these, and reduced the rate accordingly.

Held, that all the above, with the exception of the meters, should be considered as forming, if not part of the freehold, still as so far connected with it as intended to be permanently attached to it, and therefore should be taken into account in determining the rateable value of the land so occupied by the pipes of the company.

This was a special case, stated by the Quarter Sessions of Kent, upon an appeal by the appellants against a poor rate for the parish of Lee, of the 2nd July, 1864.

The rate was as follows:—

No.	Arrs.	Name of occupier	Name of owners.	Description of property rated.	Name or situation of the property.	Estimated extent.	Gross estimated rental.	Rateable value.	Rate at 8d. in the pound.
1249		Phœnix Gas Compy.	Themselves.	Line of pipes.	Throughout the parish.	Yards 15,230.	£1,539.	£1,213.	£40 8s. 8d.

At the hearing, the rate was amended by reducing the gross estimated rental from the sum of £1,539 to the sum of £500, the rateable value from the sum of £1,213 to the sum of £364, and the amount of the said assessment for the sum of £40 8*s.* 8*d.* to the sum of £12 2*s.* 8*d.*, subject to the following case:—

The appellants are a Gaslight and Coke Company, incorporated by an Act of Parliament, 5 Geo. 4, c. 78 (amended by 27 & 28 Vict. c. 1), for the purpose of the manufacture of gas and its supply to parts

of the metropolis, &c. It possesses three stations or establishments for the manufacture of gas in the parishes of St. Mary's, Lambeth, St. Saviour's, Southwark, and St. Alphage, Greenwich, respectively; and two for storeage in the parishes of St. Mary's, Lambeth, and St. George the Martyr, Southwark, respectively, whence the gas is distributed by mains and pipes to the various parishes and the consumers' houses. The stations are fitted with all the apparatus necessary for the manufacture and storing of gas. This apparatus, hereinafter more particularly described, and the buildings of the stations, have been from time to time placed by the company upon land purchased by them for the purpose, and of which they are absolute owners, with this exception, that a small part of their offices at Bankside is rented by them from other persons. The gas having been manufactured on the establishments above mentioned, is distributed to the various parishes through mains laid beneath the surface of the streets; from the mains it is distributed by service pipes to the houses of the consumers, and to the public lamps. The service pipes lead to meters, which are used for measuring the gas supplied to the consumers, and from the other side of which other pipes convey the measured gas to the burners. The mains are the property of the company. The public lamps and the service pipes which supply them are the property of the parishes. The service pipes which supply private consumers are laid down by and belong to the company for the first twenty-five feet from the main, but beyond the twenty-five feet they are laid down and repaired at the expense of the consumer. The meters are not in all cases at so great a distance as twenty-five feet from the mains. At or near the place where the service pipe ends is placed a main-tap, by which the gas can be turned off and which belongs to the consumer. Neither the meters nor the pipes beyond the main-taps are on the land of the company. No rent is charged for the use of the meters, but the consumers are charged for the gas consumed as measured by the meters at a certain price per 1,000 cubic feet. The property of the company in Lee parish, exclusive of the meters, consists only of mains and service pipes. In 1863 the assessment was raised to £1,539 gross and £1,213 net rateable value.

Against this increased rating, the company appealed and produced the following statement, and gave evidence to establish the accuracy of the figures therein set forth:—

THE PHŒNIX GAS COMPANY IN LEE PARISH.—GROSS RECEIPTS.

Total rental for the gas-light for the year ending Dec. 25, 1863 ...			£143,689
Working expenses (setting them out)		£60,872	
Less residue products, viz., coke, &c.		33,394	
		£27,478	
Wages :—			
Salaries and commissions		21,537	
Office expenses and stationery		2,104	
Maintenance of works, retorts, &c., including the expenses not only of repairs but also of reinstatement...		20,576	
Meter repairs and fixing		3,100	
Less meter rent received :—			
Lighting, cleansing, and repairing public lamps ...		2,981	
Stores :—			
Bad debts and vouchers		715	
Law expenses		1,000	
Incidental expenses :—			
Directors and auditors		2,100	
Rates and taxes, 5s. 6d. in the pound on an assessment of £15,429		4,244	
			85,655
Net receipts			£58,034
Occupiers' shares :—			
Working capital	£50,000		
Present value of meters	35,000		
Present value of retorts	18,000		
Present value of fixtures and utensils ...	97,000		
	£200,000		
Interest, 5 per cent. thereon		£10,000	
Trade profits, 10 per cent. thereon		20,000	
Risks and casualties, 2½ per cent. thereon		5,000	
			35,000
Gross estimated rental			£23,034
Statutable deductions :—			
Probable average annual cost of renewals and insurance of buildings and apparatus		£2.655	
Annual sinking fund for renewal of trade fixtures and utensils		3,000	
Annual sinking fund for reproduction of mains and pipes		1,950	
			7,605
Rateable value			£15,429
Rateable value of the whole works			15,429
Estimated rateable value of stations (not including the meters, retorts, fixtures, and utensils in respect of which above deductions are made)			8,628
Rateable value of mains and pipes			£6,801

As £143,689 Gross receipts.	:	£6 801 Rateable value of the mains,	::	£5,144 Receipts in Lee.	:	£243 Rateable value of the mains in Lee.

The Court of Quarter Sessions reduced the items set down for law expenses and statutable deductions in the foregoing statement, but found, upon the evidence before them, that all the other deductions were proper to be made, and amended the rate by reducing the net rateable value of the company's property in the parish of Lee from £1213 to £364. The meters in all cases are placed on the premises of the consumers. They are not in any way connected with the manufacture, nor are they indispensable, though used for the distribution of gas and the earning of profits. They are maintained in their position by being soldered to the service pipes, which are made of lead. If the service pipes were not required to be flexible, soldering would not be necessary, for the meters ought to be so placed as to remain in position without being fixed in any way. Meters are taken off when they require repair or removal, or for other causes, und replaced by others, and when repaired are frequently placed in a different house and in a different parish. Their original cost was £45,000. The retorts are the instruments in which the coals are carbonized and the gas produced, and they consist not only of the circular pieces of clay to which the heat is applied, but also the arches which contain them, the pipes which permit the gas to ascend from them, the iron faces of them, and the pipes over the arches which convey the gas from them through the purifiers to the tanks where it is received by the gas-holders. All the parts which are above the floor level are included in the term "retorts," and the whole of these parts are distinct and severable from the foundation or basement floor, are not attached to it by mortar or cement, but are packed with fire clay, which hardens by the action of heat, and holds them in place. (The case went on to state the perishable nature of the retorts.) The prime cost of the retorts required by the company is £24,000.

Under the word "utensils," are included "purifiers, steam-engines, boilers, and the movable part of the gas-holders." (The case then stated the nature of the purifiers, and that the present value of them in the aggregate is £35,000.)

The "steam-engines" are used for driving the machines, pumps, &c., and are fastened by screw-bolts to a stone base, fixed in the soil. By unscrewing the bolts the engines can be detached.

The "boilers" are set in brickwork, which is fixed in the soil. The present value of boilers and engines is £5000. (The "gas-holders" are then described in the case, and their value estimated at £26,500.)

The balance of the £97,000, after deducting the present value of the purifiers, steam-engines, and boilers, and of the movable part of the gas-holders above described, represents the present value of various trade fixtures, such as pumps and exhausters, which are fixed to the freehold, but under such circumstances, and in such a manner that, under the law governing the right to remove fixtures, a tenant who during his term had erected and fixed them for the purposes of his trade would, during his term, have the right to sever and dispose of them. The original cost to the company of the property valued at £97,000 exceeded this sum by £25,000.

It was proved, on the part of the appellants, and found as a fact by the Court of Quarter Sessions, upon the evidence before them, that, according to the practice and course of business in letting and hiring gas-works, the tenant would have to take to and find capital for all the property comprised under the heads "meters," "retorts," "tenant's fixtures," and "utensils," and would have to provide £150,000 for that purpose, and that a deduction in respect of such outlay was to be made in estimating, according to the provisions of the Parochial Assessment Act, what rent a tenant from year to year would be willing, or might reasonably be expected to give. They found that 17½ per cent. was a fair per centage to allow on "tenant's capital" for interest of money, for his own trouble and skill, and for provision against risks, and allowed a deduction at that rate, not only on the £50,000, which they found to be the amount of working capital which a tenant would require, but also on the further sum of £150,000.

The questions for the Court are :—

1st.—Whether it was competent for the Court of Quarter Sessions to allow a deduction by way of tenant's profits in respect of any, and, if any, of which of the matters and things comprised under the heads of "meters," "retorts," "tenant's trade fixtures," and "utensils," the nature of which is above more particularly stated; and

2nd.—If the Court shall be of opinion that in any of the above-mentioned cases it was not competent for the Court of Quarter Sessions to allow a deduction, they shall amend the rate accordingly.

Bovill, Q.C., and H. Matthews now appeared in support of the order of Sessions, and contended that the deductions were correct.

O'Malley, Q.C., and F. M. White appeared for the respondents, and argued that the deductions ought not to have been allowed :

Reg. *v.* The Southampton Dock, 14 Q. B. 587 ;

Reg. *v.* Spencer, 30 L. J. 68 M. C. ;

Walmsley *v.* Milne, 7 C. B., N. S., 115 ; 1 L. T. Rep. N. S. 62 ;

Reg. *v.* The South Staffordshire Railway Company, 30 L. J. 68, M. C. ; 3 L. T. Rep. N. S. 554.

Hellawell *v.* Eastwood, 6 Ex. 295 ;

6 & 7 Will. 4, c. 96, ss. 1, 2.

(The judgments of the learned judges are so copious that it is unnecessary to give the arguments of counsel at any greater length.)

Cockburn, C. J.—I think, whatever doubt hung over the case at the commencement of the discussion has been entirely removed by the arguments we have heard. I entirely agree that *we must look not to the position of the actual tenant as to whether he has had to pay so much additional money down for the machinery and fixtures which are necessary for the working of the concern, but we must look to see what, as the whole concern stands, would be the rent that an imaginary tenant would give for the thing as a whole*, excluding, of course, from consideration whatever would be mere chattels, and therefore would not pass under demise from the actual to the imaginary tenant. The ground being cleared of difficulty upon that, when we come to see in respect of which or any of these various items the company are entitled to have any deduction made from the rateable value, I think the case presents really no difficulty. At first one's mind was not as clear upon the matter as it has been rendered by the very able arguments which we have heard upon the subject. In the first place, we think Mr. White, who has just addressed us, has failed altogether to show that the meters are anything more than common chattels. With regard to other things, to my mind, it is plain they fall under one of two classes of articles which are properly to be taken into account as enhancing the value of the building. In the first place, with regard to the retorts, Mr. O'Malley's argument has satisfied my mind upon the facts stated in the case that the retorts are so permanently attached and annexed to the freehold, so fixed to the freehold, as to become part of it, and they must be taken therefore not as removable fixtures at all, but as fixtures so connected with the freehold as to become part and parcel of it. With regard to them there is no difficulty ; the moment they are found to be part of

the freehold, then of course they are rateable as the entire freehold would be. Then come the other items upon which a discussion has arisen as to whether the company are entitled to have a deduction. They seem to me, one and all, to fall under the principle of the decided cases referred to in the argument of Reg. *v.* The Southampton Dock Company, and Reg. *v.* The North Staffordshire Railway Company. In the latter case, the Court, after taking time to consider, laid down this rule: that where things which, though capable of being removed, are yet so far attached as that it is intended that they should remain permanently connected with the purposes of the undertaking, as for the railway or the premises connected with it, and to remain permanent appendages to it as essential to its working, those must be taken to be things increasing the rateable value of the land, and in respect of which the company were not entitled to have a deduction made. That principle applied directly to the present case. No one can doubt here that the purifiers and gas-holders are part and parcel of the works, which are absolutely necessary for the manufacture of gas, which is the purpose of the undertaking. No one can doubt that it was intended, when those things were erected, that they should remain permanently connected with those premises; that they should remain permanent appendages to it as essential to its working. They therefore fall within the rule laid down by the Court in that case. If you look at the equity and justice of the thing, there can be no doubt that, if the company proposed to abandon this undertaking, and to let these premises, because they found it did not answer, or that they had realised so much money that they did not want to carry it on any longer, or were desirous to shift their premises to somewhere else, and they proposed to let to another company or an individual or individuals the gas works, of course, what a man would propose to take and pay rent for would not be the land independent of all these articles, all of them essential to the manufacture of the article called gas, because the retorts, purifiers, and gas-holders are all as essential to the taking of these premises, and the using and occupying these premises, as gas works, as any other thing that can possibly be suggested, however permanently they may be attached to the freehold. They seem, therefore, clearly to come within the principle laid down in that case. There is another rule which is applicable here, that is, the principle on which the Court proceeded in the case of Walmesley *v.* Milne, 7 C. B., N. S., 115. There "the

owner of land mortgaged it, and afterwards erected certain buildings thereon, and for the more convenient use of the premises in his business of an innkeeper, brewer, and bath proprietor, he affixed a steam-engine and boiler, a hay cutter, a malt mill, or corn crusher, and a pair of grinding-stones. The lower grinding-stone was boxed in to the floor of part of the premises by means of a frame screwed thereto, the upper one being fixed in the usual way, and the steam-engine and other articles, except the boiler, were fastened by means of bolts and nuts to the walls, or the floors, for the purpose of steadying them, but were all capable of being removed without injury, either to themselves or to the premises." It is possible that some of the articles here, like the steam-engine and this boiler, which is fixed to the freehold; it is possible that the steam-engine, that the purifier, and the gas-holders may be removed without injury to themselves or the premises. What said the Court? They first say upon the facts, it appears that, as a matter of fact, all those articles were firmly annexed to the freehold for the purpose of improving the inheritance, and not for any temporary purpose; then they go on to say, "but the man who was the owner, who had mortgaged the premises after having attached these things to them in the way described, proposed to take them away as belonging to him, and not as having parted with them under the mortgage." The Court says, when the mortgagor, who was the real owner of the inheritance, after the date of the mortgage, annexed them to the inheritance, and for the better enjoyment of his estate, he thereby made them part of the freehold which had been vested by the mortgage-deed in the mortgagee, and consequently the plaintiffs, who were the assignees of the mortgagor, cannot maintain the present action." So here we cannot doubt, as a matter of fact, that when these purifiers and when these gas-holders, when this steam-engine and this boiler, which are absolutely essential to the working of the manufacture, were erected, it was with the view to their remaining permanently there for the benefit of the inheritance, just as much as when a man puts up the various things referred to in this case of Walmesley *v.* Milne. I therefore think on both grounds these must be considered as forming part, if not of the freehold (the latter things), still, as so far connected with it as to be intended to be permanently attached to it, and therefore they may be taken into account in determining the rateable value of the land and the premises in question, and that no deduction can be allowed in respect of them.

I think, therefore, that the Sessions were wrong in allowing those deductions, and that those deductions must be disallowed, and the rate increased *pro tanto.*

Blackburn, J.—I am of the same opinion. The rateable value of the premises is to be determined, according to the Parochial Assessment Act, according to the rent that a hypothetical tenant making the suitable deductions would give for the rateable property, and the Sessions have quite properly proceeded to try to ascertain that. The property in this individual parish is a portion of a much larger property which the gas company posseses in this parish and in others. The first thing the Sessions had to do was to ascertain the rateable value of the entire thing which the company possessed, and afterwards to see what portion of it belongs to this parish. Now, in proceeding first to get at the value of the entire property, as it was not a thing which in practice is let, you cannot ascertain it by finding what people would give in the market, and they had as is common in these cases, to proceed to ascertain for themselves, looking at the elements which a tenant would take into consideration on taking it from year to year, if it was let, what they were. I think we are all agreed upon this. It *was* disposed of early in the case, that the question is, what would a hypothetical tenant give for the whole of the rateable property; *and although in point of fact, as stated in the 18th paragraph of the case, the person who actually did occupy would not pay rent for portions of the property which are fixed to the rateable premises, so as to become part of it, which would be capable of removal, because, instead of paying rent, he would purchase them,* yet we are agreed we must look to what a hypothetical tenant, taking a portion of the premises as they stand, would give for them, with those portions which were annexed to the property, so as to become part of the rateable property. Upon that, so far as that goes, the Sessions were wrong. Then comes a question which is important, if considered with respect to other matters. I take it that it is quite clear that the principle established by the case is this—to take an illustration of the principle, it would be applied in this way: If you are letting a house furnished, you would ascertain what was the rent given for it, and what was the rent for the furniture and the fixtures, so as to ascertain how much it would be rateable for. The way to do it would be to ascertain how much was paid for the furniture, and the things in no way forming part of the rateable premises, and

deducting that from the rent paid for the furnished house the remainder would be the rent given for the house itself. The question, then, would arise, and must arise, whether the things for which you are to make an allowance and deduction are in themselves part of the premises, or are, like the furniture, no part of the premises. Now, there are some things fixtures that are attached to the premises, and part of the premises, although, as between the landlord and the tenant and the heir and executors, there is a right to remove them. Clearly, no allowance is to be made for those. There are other things, such as movable furniture in the supposed house, which are manifestly not part of what is let, and for which allowance must be made. But there are intermediate things with respect to which it is sometimes very difficult to determine, and as to which a question may arise whether they are made part of the premises or not, and upon those the question mainly arises in the present case. The rule laid down has been that, where the things are attached to the premises so as to be part of the premises, although they are removable afterwards still they are part of the premises, although there may be a right to remove them. But if a thing or a chattel be merely fixed to the premises, and so far fastened to the premises as to be still chattels, but fixed and steadied for the purposes of use there, they remain chattels altogether, so that they would not be part of the premises at all; they would never cease—to use the phrase in the case of Hellawell *v.* Eastwood—to have the character of movable chattels; although fixed for the purpose of the enjoyment of them, still they remain movable chattels. The ordinary illustration is a mirror, which in the ordinary way would be screwed to the wall, still it remains a movable chattel and is no part of the premises. On the other hand, a grate which is built into a chimney, although it is capable of being removed by a tenant, would still be fixed to the premises, so that it would be part of the premises, and therefore part of what would be considered to be let to the hypothetical tenant, and for which he would pay rent. Now comes the difficulty of applying it to the present case. We find in the case of Hellawell *v.* Eastwood, the Court of Exchequer were dealing with machinery that was fixed and screwed, and attached to the premises, and they laid down the rule, as being a matter of fact depending upon the circumstances of each case, but principally on two considerations, first, the mode of annexation to the soil or the fabric of the house, and the extent to which it is united to them, whether it can be easily removed *integre, salve, et*

commode, or not, without injury to itself or the fabric of the building; secondly—and this is what I am calling attention to, on the object and purposes of the annexation—whether it was for the permanent and substantial improvement of the dwelling, in the language of the civil law, *perpetui usas causa*, or in that of the Year-book, *pour un profit de l'inheritance*, or *merely for temporary purposes*, or the more complete enjoyment and use of it as a chattel. In that case the Court of Exchequer thought the things were only put up and fastened in a way for the temporary use and enjoyment as a chattel; but they did put it clearly and distinctly, that two important elements to consider are, first, the degree of annexation; and, secondly, if it be in fact annexed, the object of the annexation, whether it was for the improvement of the inheritance, that it was attached to a part of the inheritance, and whether it was for the enjoyment only of the thing itself. In the case that my Lord referred to, of Walmesley *v.* Milne, 7 C. B., N. S., 115, which was very nearly a similar case, as far as the facts went, to this of Hellawell *v.* Eastwood, the Court of Q. B. laid down the same rule, and came to the conclusion that the machinery and things were firmly fixed to the freehold for the purpose of improving the inheritance; and, taking that view, they thought it attached to the inheritance, so as to become part of it. That is the rule laid down there, and the indefinition as to when the thing ceased to be a chattel, so as to become part of the inheritance, although it might be removed. That was the principle laid down in the case of the Southamption Docks, where the things were similar to those in the other case. It is not of course in the precise words, but the same idea is conveyed. The things there were cranes, turn-tables, and a variety of other things which were attached to the premises of the railway company, in one sense screwed down, some of them firmly attached and some of them not. The Court said that the things which were not attached to the freehold were to be deducted, and an allowance made for them, and the things which were affixed to the freehold clearly enough would not be allowed for. Then the rule laid down to guide the Sessions in what they were to do was this. The articles may be divided into three classes: First, things movable, such as office and station furniture. As I have said, all the cases agree in the principle. "It is clear these are not to be included." Secondly, things so attached to the freehold as to become part of it. It is clear, on the principle of all the cases, that no deduction is to be made for them, and they are to be considered as

part of what is left. Thirdly, things which, though capable of being removed, were yet so far attached as that they were intended to remain permanently connected with the railway or the premises connected with it, and to remain permanent appendages to it as essential to its working. I think that that phrase, as it seems to me contains the same idea identically as is stated in the case of Hellawell *v.* Eastwood, citing it from the Year-book where they say, if it be fixed *pour un profit de l'inheritance;* and again, as in case in the Q. B. Reports, where it was said the question was, whether they were for the enjoyment of the inheritance; the idea is throughout the same—if things are annexed though but slightly, but with a view to the enhancement of the inheritance and the permanent improvement of it, they may be considered as part for which a hypothetical tenant would be considered rateable. Now, that being so and applying that I was inclined at first to take an opposite view as to some of them. Look at the various matters put here: they all with the exception of the meters, on which I shall say a word afterwards, are, although but slightly attached to the premises; nevertheless, I think it is clear they all are in fact attached to the premises, and equally clear they all are in fact attached to the premises with the view of enhancing the benefit of the premises, so as to come within the principle laid down in the three cases I speak of. Then with reference to the meters, it is a different matter. The meters are chattels themselves, except so far as they are attached to the houses in which they are put up. They are attached to the house as a pipe comes in through the wall and is attached to the meter; that is, attached to a house so as to render it part of the house to improve it, then it would become fixed property. Then, in fact, it is obvious that the meters are kept as the company's meters, to be used as their chattels for measuring the gas, and were never intended to be for the benefit of the house to which they are attached at all; they are not part of the inheritance of the company, and cannot be said to be so. Mr. White, endeavoured to argue, so as to make out that a meter occupies part of the space of the house, and therefore the company did by occupying the meter, occupy part of the house. That is not so. Although the meter is firmly fixed to the house, steadied by being fixed, that does not make the company the occupier of any portion of the house; just as in the case I put in the course of the argument, of a person who has hired out or let a chattel which is not fixed to the house, but enjoyed as a

chattel. He cannot be said to occupy by means of his pianoforte, if it be a pianoforte, part of the premises For that reason I think the meters are properly matters of deduction, and the rest are the other way. Therefore, the result will be that the amount on the rateable value of that entire chattel—the proportionate sum, I think, £8,000, will be deducted as rateable value of that portion of the premises—that amount ought to be deducted. The figures will have to be rectified, and I do not go into the question of figures now; I believe there will be no great difficulty in finding out and rectifying them when the facts decided by us are taken as the basis to go upon.

Lush, J.—I am of the same opinion. The sum to be arrived at is "the net annual value of these premises at which they might reasonably be expected to let from year to year free of all usual tenant's rates and taxes, deducting the expenses necessary to maintain them in that state." The question is, what is the rateable subject which is comprised within the premises to be rated here? *Now, I apprehend that the premises to be rated are to be taken as they are with all their fittings and appliances by which the owner has adapted them to a particular use, and which would pass as a part of the premises by demise of them to a tenant.* It strikes one as expressing what in other words has been expressed in the two cases referred to by my learned brethren. Wherever they have become so far a part of the premises that they would pass by a demise of those premises, they would form a part of the rateable subject of the inheritance in the value for the purpose of rating. When we have to apply that test to any particular footing, the question is not what a tenant might remove, nor what might be taken in execution against the owner, but what as between the landlord and tenant would pass as a part of the premises which he was to let and what they were to the tenant. *Now, applying that rule, I cannot entertain a doubt that, with the exception of the meters, all the subjects of discussion here would pass as a necessary part of these premises. Without the retorts, purifiers, the steam-engines, and the gas-holders, the premises would be worthless for the purpose for which these things were erected; they would not be a gas manufactory at all.** All these things are fixed, and so far annexed as to be in-

* In R. *v.* Birmingham and Staffordshire Gas Company, 6 A & E 634. Held gas works must be rated on an amount equal to that which they would let for to a person willing to *carry on the same trade.*

In R. *v.* Hogg, Cald. 266. If the owner of a tenement fitted it up as a malt house, and put a malt mill in it, and then let the whole together, the whole must be estimated together.

tended to to be permanent and as really necessary for the use of the premises as gas-works. Therefore, I think, except the meters, that the whole of these items ought not to be allowed in ascertaining the ultimate net annual value. The meters are on a different footing and in no sense a part of the gas-works. They are not upon the land occupied by the company, and are not fixed in such a way as to be a part of the freehold. I was struck in the early part of the argument with the finding in the 18th paragraph of the case. It appeared to me to distinguish this from the other case, and for a time I entertained considerable doubt whether, on account of what was found there, all those items, although forming part of the rateable premises, ought not to be deducted. *The finding is,* "*That, according to the practice and course of business in letting and hiring gas works, the tenant would have to take to and find capital for all the property comprised under the head, meters, retorts, tenants' fixtures, and utensils,* and would have to provide £150,000 for that purpose, and that a deduction in respect of such outlay was to be made in estimating, according to the provisions of the Parochial Assessments Act, what rent a tenant from year to year would give." *It struck me at first, that being so, the tenant would be bound to take these premises without making an outlay by purchasing all these articles, and the rent he would pay would be so much less, and that rent would represent the rateable value. Upon consideration, I quite agree with my brethren, and I am satisfied that that is not the right view, on the hypothesis that all these things, except the meters, do form part of the rateable subject, and ought to be taken into consideration in estimating the rateable value; because, if a tenant and a landlord agree, the landlord, before the place is let, agrees that the tenant should pay down a price for part, that is, purchase part of the freehold, to say that the rateable value would be diminished would be absurd. I quite agree with my brethren, therefore, that it makes no difference at all whether the tenant takes the whole; assuming he did, or whether by contract between him and the landlord he purchased the fixed plant, which, if not so purchased, would be a part of the permanent premises.* I quite agree that, except the meters, all the other matters are rateable, and that all of them ought to be disallowed.

The rate to go back to the Sessions to be amended in accordance with the judgment of this Court.

SUPPLEMENTARY REPORT

ON THE

RATING OF MACHINERY,

WITH THE

Decisions of the Superior Courts thereon since 1866,

INCLUDING

LAING v. THE OVERSEERS

OF THE

TOWNSHIP OF BISHOPWEARMOUTH.

ARGUED IN THE QUEEN'S BENCH DIVISION OF THE HIGH COURT OF JUSTICE ON THE 21st NOVEMBER, 1877.

It will be seen by the judgment of the Court of Queen's Bench, in the Phœnix gas case, that the decision in that case was in conformity with all the previous cases, from St. Nicholas, Gloucester, in 1783. So that between 1783 and 1866, machinery was uniformily held by the Superior Courts to be rateable.

The next case which came before the Court of Queen's Bench was the "Halstead case," in 1867, on the rating of looms and machines in a silk mill. The Quarter Sessions for the county of Essex, decided the looms and machines were not rateable, and, on the applicatian of the respondents, stated a case for the opinion of the Court of Queen's Bench. The case stated by the justices was argued before the Court on the 5th day of June, 1867, and the Court held the looms and machines were not rateable.

As it is contended this decision over-ruled all the previous cases and authorities, it is important to give a full report of all the proceedings.

The following is a report of the proceeding at the Quarter Sessions from the *Essex Standard*, 20th October, 1866:—

COURTAULD *v.* THE HALSTEAD ASSESSMENT COMMITTEE.

FACTORY RATING.

This case involved a question of great importance to all manufacturers—namely, whether the machinery used in this business is rateable with the value of the building in which it is placed. The Solicitor-General (specially retained) and Mr. Philbrick appeared for the appellants; Mr. Walford and Mr. Tayler for the respondents.

The Solicitor-General said this was an appeal by Messrs. Courtauld, the large silk factors at Halstead, who up to 1856 were being rated at £261 10*s.*, which was increased in that year, and subsequently, till they stood in the rate at the gross annual sum of £722, and a net annual value of £613 15*s.* On the occasion of making the present rate the Committee of Assessment, without, as he believed it would turn out, taking any proper professional advice or assistance, took on themselves to raise the gross to £3,000, and assessed the property at the net sum of £2,400; in short, taking on themselves to multiply the value by the figure four, without, as far as he was aware, having any ground for it. The effect of this was to throw on Messrs. Courtauld the burden of showing what was the proper amount of the rate. Application has been made to them to give the details and some explanations, but this had not been done; and the case therefore came to this Court for Messrs. Courtauld to show the parish were entirely wrong in some view they had taken, but what that view was he was not in a position to state to the Bench. The way, he understood, however, in which it had been done was this—that some members thought they were entitled to have a rate, and include in it all fixtures and machinery contained in the mills; and so far as he was aware he believed it would be a question of what ought, and what ought not, to be included in the assessment. Now, of course, if the machinery was to be included, the rates, especially in the manufacturing districts, would be on a different footing to that now adopted, for, as far as they knew, throughout the manufacturing district there had never been such a thing known as rating machinery. In one sense steam boiler, shafts, &c., were machinery, and it had been decided that machinery put up and

intended to be permanently part of the freehold was liable to be rated. There had been a case with respect to mines, in which it was decided that machinery of this kind was rateable, as it became part of the buildings on the land. So also in the case of dock companies it became necessary to erect steam-engines, cranes, &c., which became part of the buildings, and as it were a portion of the land, and then they were rated as part of the improvement of the land. So also again in the case of railway companies, if they fixed sleepers in the land they became so much permanent improvement of the land itself. So again with gas companies, if mains, pipes, &c., were placed in the ground, in that sense they became part of the soil itself, and the retorts and the mains to which they were fixed were part of the inheritance of the ground. It would be no part of his duty to controvert the decisions on these points, laid down by courts of law; but there were other things which were chattels, never lost the character of chattels, and which were never intended to be the part of the permanent property in which they were placed. Let them take a familiar instance, that of a looking-glass purchased as a chattel, and which, if large, was screwed or nailed to the wall, but if small was hung on a nail, and he did not think his friends on the other side would be bold enough to contend that a looking-glass became part of the freehold because it was nailed to the wall. Then take the case of a carpet, it was nailed to the floor, not as a permanent part of the house, but to keep it straight, so that it might be used as a chattel. So also in the case of a bedstead or billiard-table, they never lost the character of chattels, though they might be fastened to the ceiling or floor. Let them take another illustration—a carpenter's bench was not of sufficient weight to keep it steady, and it was fastened to the floor, but there it still remained a chattel. These were instances in which no magistrate on the Bench could entertain the slightest doubt. Again, a gentleman purchased a turning-lathe, and wanted to use it, and he either fixed it to a block or the floor, but there it remained a chattel, and not a part of the house. If this principle were once understood, it would go a great way in deciding the point with which they had to deal. Now he came to the question which they had to decide. Messrs. Courtauld had property at Halstead, on which they had erected considerable works, and the business carried on there was that of the silk and crape manufacture. There were an old and a new mill, and the building stood on two or three

acres of land. That land must be taken as other land in the neighbourhood was, and then the buildings must be estimated according to their character. The mode was to estimate what you could erect them for, what would be their value, and what you could get for buildings suitable for that purpose. Then in these buildings there was a certain power employed, partly water, and partly steam power—all that was capable of being valued. There were one or two steam-engines and boilers, and shafting in connection with them had been put up as permanent improvements of the mill; these must be considered as part of the mills, and they should have to ascertain what their value was as part of the buildings. That could be arrived at by ascertaining the cost at which they had been put up, though that was not an unerring test. Then, again, the buildings wore out, and there must be an allowance made for keeping them in repair. He thought he and his friends on the other side should make no difficulties about the steam-engines, boilers, and shafting; but at this point they parted company. In these mills there was machinery necessary for the manufacturing of silk and crape. There was first the winding machine. As the silk came from abroad it came in skeins or hanks, which were put on the winding machine, and a single piece of silk was drawn on to a bobbin. These machines were on a large scale, and were made to wind 50 or 60 or 100 skeins, according as required, and some of them were 50 or 60 feet long. That winding machine was a chattel to all intents and purposes as much as any little article in a lady's workbox. That machine might be turned by hand, but where they had steam on it was connected with the shaft, and thus it was driven. Now this machine must be steadied, and perhaps this was done by fastening it to the floor for that purpose—that was solely for the purpose of steadying it. Did this fastening to the floor make it a portion of the permanent building and part of the inheritance? That was the question they had to decide. Were these machines, which were chattels in themselves, to become part of the permanent improvement of the property when annexed in this way for the purpose of steadying them? He denied that they did. He said that they remained a chattel. The courts of law had decided in the case of Lee, 1st vol. Law Reports, page 241, which was the case of a gas company, that the retorts, pipes, &c., were a part of the freehold, but the meters maintained their character of chattels, though they were soldered to the pipes. The judgment

of Mr. Justice Blackburn (which he quoted) bore this out. Applying that judgment to this case let them take the winding machine. It was put up in a mill as they would put up a bedstead in a house, and there it remained a chattel. Now it so happened that in the town of Chelmsford there was a pretty little factory of Messrs. Courtauld, where there were some of these winding machines, which he had seen this morning, and some of them were so small that they could be lifted up by the hands, while in other cases they were screwed to the floor, but there they remained as much a chattel as the looking-glass or a carpet. Now the point of his learned friend would be that because they were screwed to the floor they became part of the freehold. The next machine was what was called a drawing machine. It was simply this—the winding had been on bobbins perhaps an inch and a quarter in diameter, rather roughly done, and the drawing machines were to wind it on to small reels. This, he contended, was to be treated the same as the winding machine, and like it remained a chattel. The next was the throwing machine, which gave a twist to the thread; it put it on another reel, giving it a twist in the process. They had it then in a state for weaving. Then they had to place the thread to be used as a warp, and that was done by a warping machine, which took it on a roller which carried it on the loom. The next thing was a plug machine, which was to transfer the silk from the reels to a plug to be inserted in the shuttle. They then came to the loom itself, the principal machine. For all these things they used steam and the shaft, and these machines were fixed, but he submitted they all remained chattels. This being so, what he understood they intended to do on the other side was to ask the Bench to say that all these machines, because they were large and screwed to the floor, were part of the inheritance and liable to be rated; but they had not been able to find a single case in which machinery of this kind had been rated. Inquiries had been made in the manufacturing districts, and the result was that in no one instance had such a thing as rating property of this description been resorted to. Now the Corporation of Manchester looked close to the mass of property of this kind, with which they had to deal; they had taken great trouble in these matters, and they had employed a gentleman named Morris for this purpose. It was his business to value for assessment the mills in Manchester. He would be called here, and he would tell them there never was such a thing as rating machinery. It would

be perfectly unbearable to manufacturers. He believed in the whole of Manchester, Macclesfield, and Congleton there was not a single manufacturer rated at what the parish of Halstead had rated these gentlemen. He should have other witnesses of great experience; one was a gentleman of the name of Linge, who was employed by the parochial authorities as comptroller of the rates of Manchester. There were no two men in all England of more experience than these two gentlemen; and if there should be any difficulty in the evidence on the subject, the Bench could within a quarter of an hour inspect some of these machines in the factory of Moulsham. He now came to some cases bearing on the subject. In Hellawell *v.* Eastwood, 6 Exchequer Reports, pages 310 and 312, the question was whether certain cotton spinning machines were distrainable for rent; some of these machines had been fixed to the floor, and it was laid down that the question was one of fact which the magistrates in session must determine, whether their being attached to the ground took away their character of chattels. In Staley *v.* Castleton, 33 Law Journal Reports, Magistrates' Cases, page 178, where cotton machines were kept in a mill and not worked, the Court held that the building should be rated as a warehouse for the machines. In Harter *v.* Selford, 34 vol., page 206, it was a similar case of a silk mill, and there it was held it could only be treated as a warehouse. Now they came to what was the value of this property. He should be able to call very distinct evidence on that. He should call before them some of the first surveyors, who would tell them what this property was worth, and they would hold with the others that there was no pretence of treating this machinery as part of the freehold. Their estimate would put the value of the property at between £600 and £700 a year; and he submitted that the question was really one of fact for the Court to determine.

David Morris, valuer and mill architect at Manchester, of forty-three years' experience, said he was often called on to value mills and that kind of property for rating; had paid particular attention to all matters of machinery, and wrote all the articles on them in *Ure's Arts and Sciences;* for six years had been the valuer of the Corporation of Manchester in all such cases; had also had experience in silk mills at Macclesfield lately, and should think he had valued 150 there; had inspected Messrs. Courtauld's mill, which had been built at different times and in different portions, being from forty to twelve

years old; valued the whole of the freehold and landlord's plant, as distinguished from the tenants, just as if he had been valuing for his own Assessment Committee, except allowing for the greater cost here; he put the building at £6,719 1*s.* 6*d.* gross value—that is, the present value; the water-wheel, boilers, and engines, with their seatings, £1,240; mill gearing or shafting, and casings, £875; steam, water, gas-piping, meters, &c., £432 12*s.* 6*d.*; the total gross of that is £9,266 9*s.* 4*d.*; taking that at 6½ per cent. gives a yearly gross rental of £602 6*s.*; the land I value at £30; eight horse-power of water I put at £40; that gives a gross annual rateable sum of £672 6*s.*; deduct one-sixth, and the net value would be £560 5*s.*; saw the machinery at work, but did not include that—he never did—he only included the steam power and main shaftings; these create and convey the power, and are rateable; but when that power is taken up by the machinery that is to utilise it, then that machinery is not rated—that is the rule; the winding machine was the first of these; it was bought and sold as a chattel, and he never knew it rated; Lancashire would be up in arms if it were; to steady it it was the most convenient mode to put a screw to the foot and the floor; sometimes they were fastened in this way, and sometimes not; at Halstead they were all fixed; to keep the machines in their proper line they were generally fastened in this way; there was no case in which a machine of this kind was not considered tenant's property; never knew a variation of that rule; this applied to all the other machines down to the loom; in all his experience of forty years he had never known a silk mill rated at £3,000; he should say that no silk mill in the north of this size would be rated at £600.

Cross-examined. In rating Mr. Courtauld's mill he considered the solidity of the walls and the character of the building; the number of square yards of all the mills and out-houses was 6,783, and he took the value at 27*s.* a yard; the chimney, 80 feet high, he put at £70; that was estimated in the gross total he had given; he had not at all valued any of what he called the machinery; had not the slightest idea of the value of it; he should say there would be 1,000 hands employed; there were 647 power-looms, the cost of which, he should say, would be £2 10*s.* each; there were 25 double warping mills and five single ones.

Re-examined by the Solicitor-General. Beyond the point at which he had valued he considered all were chattels; in Lancashire the

machinery was much more fastened to the floor than it was at Halstead.

Thomas Linge, comptroller of poor rates at Manchester, had twenty years' experience in rating property of this description, silk as well as cotton mills; went over all the mills there every year for the purpose of assessment; had been over the mills of Messrs. Courtauld, and valued them as if acting for the Assessment Committee; put them at the gross at £700, and £584 at the net rateable value; proceeded on precisely the same principles as he followed for years at Manchester, and it was up to the point where the power was to be delivered to the machinery; the machines were simply fixed to steady them, and not as part of the freehold; he regarded them as much chattels as a gentleman's carpet or dining-table, and they were always so treated in Lancashire.

Cross-examined. He put the value of the buildings at £8,188 7*s.*; engines and gearing, £1,350; total, £9,538 7*s.*; taking that at 6½ per cent. would be £620; then there was the water-wheel £40; the land £35 15*s.*; this brought the value to £697 16*s.* The machinery here was very good, but he could not say the value; he made no estimate of it.

Re-examined. Did not value the machinery because he regarded them as chattels.

William Raby, of the firm of Corbett and Raby, Manchester, said he was valuer to many unions round Manchester; appeared for the Poor Law Board; for twenty years had been the leading valuer for assessment at that place. Had valued Mr. Courtauld's mills, and put the gross at £725; the net rateable at £609; this was the same valuation he should have made if sent by the Assessment Committee.

Cross-examined. It did not include the machinery, and he had never known it rated beyond the point at which it received the moving power; did not take the gas, but took engines and shafting, carrying the power up to the working machinery; he took 6½ per cent. on the buildings and 6 per cent. on the power.

Edward Wright, surveyor, of Westminster, had been in the profession thirty years; he had gone carefully over this property of Messrs. Courtauld, and had gone over the buildings and motive power, but had not included the machinery, because he thought it ought not to be rated—it never was rated; fixed the gross value at £750, and rateable value £600.

Cross-examined. Looked at the machinery, but did not fix any value on the chattel machinery, as he did not consider it rateable according to the general practice.

Mr. Oakley, of the firm of Smith, Son, and Oakley, had been a valuer since the new Poor Law, and had had much practice in rating valuations; he had valued this property, and made the gross £714, and the net £571; he included in that all the buildings and motive power up to the end of the shafting, but not the machinery beyond—it was not usual, as the machines were implements of trade; they are so regarded; the practice was beyond all doubt; and he had never met with an instance in the world in which the machinery had been rated.

Mr. J. S. Surridge, surveyor, of Inworth, had had great experience in parish rating, and had forty years' experience; valued these premises at £722 gross, and net £610; that included the motive power but not the machinery; that was the invariable practice; valued this property for the parish in 1856, and he did it then on the same principle, and the parish rated on it for twelve years.

This was the appellants' case.

Mr. Walford then addressed the Court for the respondents. The question, he said, appeared to him to resolve itself into two parts; the first, how the article was connected with the soil; and secondly, the purpose for which it was annexed. In the case of rating gas-works, alluded to, Chief Justice Cockburn said if the articles were so attached to the soil as to show it was intended that they should remain there as a necessary appendage to the working, then they were rateable; and there was no doubt the articles were necessary for the manufacture of gas, and that it was intended they should remain. It therefore came to this—that where something was annexed to the realty for the promotion of a particular purpose, and was essential to it, then it became a part of that land. Here the whole place was dedicated to the manufacture of silk and crape, and this machinery was as essential to it as the motive power. If that machinery were taken away it would cease to be a crape manufactory. It was essential to the purpose to which the land was dedicated, and if so it had become part of the land. In the Queen *v.* North Staffordshire Company a similar decision was given. The question, therefore, was, was the machinery intended to be permanently connected with the building, and therefore essential to its working? And

he submitted that here it was as necessary to the production of crape as the motive power itself, and in accordance with the decisions he had quoted was clearly liable to be rated. This, he contended, was borne out by the judgment of Mr. Justice Blackburn, and on the strength of these authorities he had submitted that this machinery had become rateable property as applied to a purpose connected with improvement of the inheritance.

Mr. Glyn. Could this machinery be removed by the tenant?

Mr. Walford said according to these decisions that was not the question. He considered the whole as one great machine, and if they took this part away it would cease to be a crape manufactory, the purpose to which the land was dedicated. The article as laid down by the authorities might be slightly annexed, but if it was there for the permanent improvement of the inheritance it was rateable. It did not signify whether it would go to the heir or could be removed by the tenant; if it was intended to be for the permanent improvement of the inheritance it became a part of it. The essentiality of its working was a proof of its annexation for the purposes of rating. He should now call before them some experienced surveyors, who would give the Court their view of the matter, and show that a fair value had been set on it.

Mr. William Weald, engineer and valuer, of Manchester, of large experience in mills and machinery, said he had been over these mills, and taking the whole value, machinery and all, he put the fair annual value at £3,012; the net rateable at £2,395; the gross value of the whole he took at £21,591, divided into four classes—1st, the building, &c., £13,620; he took that at £995 annual value; 2nd, boilers, shafting, wheels, &c., £239; 3rd, condensing engine, partitions, drawers, and counters, £145; 4th, the machinery, winding, drawing, throwing frames, &c., and looms, £1,260 annual value; the total was £2,640. All the machinery was necessary for carrying on this business—it was all special machinery for the purpose; the land was included in class 1, and he had put the annual value at £57 12*s.*

Cross-examined. Never valued a silk mill in his life, except his own, which he had about ten years ago; he did not value that for assessment purposes; this was his maiden effort; had never valued a cotton mill for assessment; his instructions in this case were to find out the exact value of the mill and machinery; if he took 6 per

cent. on the whole value, the rent of all would be £1,320; the total value he put at £21,903; on the machinery he took 20 per cent., and he knew it could not be made and let at less; in Lancashire machines were always treated as chattels, and taken out of the buildings and sold as such.

Re-examined. Steam-engines were also taken out and sold, and until they were fixed they were chattels.

Thomas Newbold, surveyor, at Derby, had been over Mr. Courtauld's factory, and put the gross annual value at £3,012, and the net at £2,328; had divided the property into classes, like the last witness, and put the net annual value of the machinery at £760.

Cross-examined. He never knew it to be the practice to rate machinery in silk mills at Derby; he had never known it rated; told the Assessment Committee so, and after that they asked him to come as a witness; the machines were always taken out, sold and treated as chattels, and at Derby they were fixed firmer than they were at Halstead.

Mr. P. Oakland, a valuer, of Burton-on-Trent, said he never was called on to value machinery for rating purposes before; he put the value of class 1, the buildings, land, motive power, &c., at £1,008 net rateable value; class 2, £212 8*s.*; class 3, £118 19*s.*; class 4, the machinery, rent, £1,263 16*s.*; and the net rateable value at £947 18*s.*

Cross-examined. Never thought of such a thing as valuing machinery for rating purposes—was never asked and never knew it done.

Mr. Tayler then summed up the respondents' case, observing upon what had been said as to machinery never having been rated, that in all cases which had gone to the Queen's Bench and established the law on some particular points, they were most of them first cases of rating of the kind, and so this might be the first case establishing the rating of machinery. He referred again to the decided cases on the points bearing on the question. In the case of the King *v.* Gloucester, Mr. Justice Willes observed that if a billiard-table stood in a room, and the room let for more on account of it, it was to be rated at a higher sum while the table remained. Therefore the question of rating a billiard-table was not so absurd as the Solicitor-General had represented. On the whole he strongly contended that these machines having been put in the building increased its value,

and being one attached, as the term was, they ought to be taken into consideration in the rating, as essential to the carrying on the work of the crape factory.

The Solicitor-General replied upon the whole case, submitting that not one of the witnesses for the respondents had sustained the principle of rating machinery, but, on the contrary, they all said they had never known it rated—it was always treated as a chattel. As to the cases quoted, they were all considered in the case of Lee, and it was there laid down that if the articles were fixed only for the purpose of steadying them (as was the case here) they remained chattels still. They had six witnesses called by the appellants, the average of whose statements gave a net gross rental of £712, and the net rateable value of £589, or in round numbers at £590; and he should ask the Court on this evidence to fix the rateable value at £600, in order to mark their sense of the conduct of the Assessment Committee.

After the magistrates had consulted for some time, the Chairman said they wished further to consider the case, and would give their judgment in the morning.

On Thursday the magistrates further consulted, and

The Chairman then said: It is now my duty to give the opinion of the Court on this case, and I may state it very much in the words which we have agreed on—namely, that the evidence offered to us is not sufficient to satisfy the Court that the machinery sought to be rated is so attached to the freehold as to render it liable—that it is not so essential to the working as to make it liable to be rated. We cannot see any ground to support the amount of the assessment of the Messrs. Courtauld, and we decide that the rate should stand as it did in 1865; and that the Court amend it accordingly.

The rate was then amended by reducing it from £2,400 to £613 15*s*.

Mr. Philbrick applied for costs.

Mr. Walford opposed the granting of them, and asked for a case for the Court of Queen's Bench, on the ground that this question was of a peculiar nature. Looking to the character of the articles sought to be rated, it was really a question of law—a nice and delicate question, as shown by the Court taking time to consider it. The question was one of great consequence to the parish—it was really of great consequence to the question of rating in general.

Mr. Philbrick expressed his astonishment at the other side seeking

an appeal to the Court of Queen's Bench on a fact which had been decided by the Court. The judgment was that the machines were not such a part of the freehold as to be liable, and were not fixed in such a manner as to be rateable, and that was decided by the case of the Queen *v.* Lee.

The Court said they should grant a case.

Mr. Philbrick said then the decision would be that the appeal should be allowed with costs, subject to a case.

Mr. Greene thought they should not grant costs here. This was a nice question of law, and it could not be raised in a better manner than the respondents had raised it.

The case was granted without costs; but it was intimated that costs would follow the result in the Court of Queen's Bench.

The following is the Case stated by the Court of Quarter Sessions, reported in *The Justice of the Peace*, February 22, 1868 :—

REG. *v.* OVERSEERS OF HALSTEAD.

POOR RATE—FIXTURES IN SILK MILL—RATEABLE VALUE—MACHINES FIXED WITH SCREWS TO STEADY THEM.

(Argued in the Court of Queen's Bench, June 5, 1867.)

In certain silk manufactories which were assessed to the poor rate, machines were driven by water and steam power, and there was a water-wheel and steam-engine which communicated motive power, by means of main shafting and driving gear, to each floor in which the silk machines stood. The machines were fixed to the floor by iron screws, which were used only for the purpose of steadying the machines when in use, as they were slighter than those used in other similar factories.

Held, that in assessing the manufactories, though the steam and water power and the main shafting were rateable, yet the machines were not to be included in the rateable value.

ESSEX TO WIT, At the general Quarter Sessions of the Peace of our Lady the Queen, holden at the Shire Hall, at Chelmsford, in and for the said County of Essex, on Tuesday, the 16th day of October, 1866, and thence by several adjournments held at the same place on Thursday, the 18th October, in the year aforesaid, upon the hearing of an appeal against a certain rate or assessment for the relief of the poor of the parish of Halstead, in the said county of Essex,

made on the 15th day of June, 1866, in which the said appeal of Samuel Courtauld, John Minton, George Courtauld, Harry Taylor, and John Warren, carrying on business under the style or firm of Samuel Courtauld and Company, were appellants, and the churchwardens and overseers of the poor of the said parish of Halstead, and the board of guardians of Halstead Poor Law Union in the said county of Essex, being the union within which the said parish of Halstead is comprised, were respondents, and in which said rate or assessment the said appellants were rated or assessed for or in respect of factory buildings and premises situate in Bridge Street, in the said parish of Halstead, of a gross estimated rental of £3,000, and at a net rateable value of £2,400 in lieu of the last preceding assessment of £722 gross, and £613 15*s.* net rateable value.

It was ordered that the said rate or assessment be amended by reducing the said gross estimated rental from £3,000 to the former amount of £722, and the net rateable value from £2,400 to the former amount of £613 15*s.* But at the request of the respondents the Sessions granted the following case for the opinion of Her Majesty's Court of Queen's Bench :—

CASE.

1. The appellants are owners and occupiers of a silk and crape factory, situated at Halstead, containing certain valuable machinery used in the said manufactory, and the question in this case is whether the machinery hereinafter particularly described in paragraph 3, is to be included in fixing or ascertaining the rateable value of the said factory for the purpose of assessment to the poor rates.

2. The factory consists of one and three-quarter acres of land, on part of which are erected four main buildings, two connected together. These buildings have one, two, two and a half, and three floors in them respectively. There are also some minor out-buildings, such as tool and coal houses, and engineers' workshops.

3. The processes carried on in the said factory are those of silk throwing and weaving, and the machinery necessarily employed therein may be briefly described under six classes—three in respect to throwing or preparing of silk for the looms, and three in respect to the weaving the prepared silk.

In respect of Silk Throwing.—The winding engines for winding the raw silk from the skeins, as imported, on to bobbins.

The drawing engines for transferring the silk from the winding bobbin on to a smaller or drawing bobbin, for the purpose of removing imperfections in it.

The throwing or twisting machines in which the thread of silk is passed from the drawing bobbin to a third set of bobbins, and receives a twist in the process.

In respect of Silk Weaving.—The warping machines, by which the silk is intended for the warp or woof of the fabric, is distributed in even and regular order on to rollers, which being placed in the loom, supply the warp to the weaver.

Plug engines, in which the silk intended for the weft or shoot, is drawn on to plugs or small bobbins, which are placed in the shuttle, and supply the weft of the fabric.

The power-looms themselves, in which the fabric is actually woven. All the floors of the above four main buildings contain machinery of one or other of the above classes.

4. Many of these machines are of considerable size, some as long as 50 or 60 feet and 3 or 4 feet wide. They are similar to those ordinarily used in silk throwing and weaving factories, and are fastened to the floors on which they respectively stand, by screws passing through holes in the feet of the machines; such fastenings are for the sole purpose of steadying the machine when in use, and are slighter than those generally adopted in other similar factories. The same object could be obtained by making the machines heavier, or by placing weights upon them. The machines of the aforesaid kind are separate and distinct from each other, are movable at will by being taken down, and put up either for repairs or re-arrangement, or change of use of the building from the silk trade to any other factory purpose, or any other cause, without damage or injury either to the machinery or to the buildings, and are commonly bought or sold, used, and renewed as chattels.

5. These machines in the Halstead premises are all driven by water or steam power, and for this purpose there are a water-wheel and steam-engines; the motive power from which is communicated to several machines by certain shafts and gearing, commonly known as main or driving gear, or main shafting, or by straps or bands therefrom, in the common way that motive power is applied to a particular machine or set of machinery in other factories, whether in silk, cotton, wool, or other trades; that is to say, at Halstead, a

leather or gutta percha endless band runs over a drum or pulley fixed on one of the shafts of the driving gear, and also over a drum or pulley fixed on the shaft or main spindle of the particular machine. In most cases, at the side of the drum so fixed on the shaft of the machine, there is a drum revolving loosely on the shaft, but not fixed to it, so as to enable the workman to stop the machine by shifting the endless band from the fixed to the loose drum.

A few of the machines are driven by an iron shaft communicating with the main driving shaft, and coming in contact with wheels or spindles of the several machines; but in these there is also the means provided for slipping aside the wheel which drives the machine, so as thereby to stop the machine.

6. It was admitted by the appellants that the steam or water power and the main shafting were rateable; but the respondents had included in the assessment appealed against, all the machinery hereinafter mentioned, and contended that it was properly included in the assessment. The question between the parties therefore was, whether the machinery as described in paragraph 3 was to be included in the assessment of the premises to the poor rates or not.

7. It was proved that it was the universal practice, according to the experience of the witnesses called, to include the steam power and main shafting, but never to include in the assessment such machinery as are here in contest; that no instance of the kind was known to them.

8. It was conceded for the purpose of this case only, that if the machinery in question was to be included in the assessment of Messrs. Courtauld's factory, the rateable value appealed against was unaltered.

On the evidence the Sessions found as follows:—

The Court cannot see any ground upon the evidence placed before them to support the assessment of Messrs. Courtauld's premises, at the amount the Assessment Committee have placed upon it, and do not think there is any evidence to alter the old assessment of the same property.

The judgment is, that it should stand as it did in 1865, and the Court ordered the rate to be amended accordingly.

The evidence is not sufficient to satisfy the Court that the machines sought to be rated are so essential to the use of the fixed motive power or the freehold as to make the machines rateable property.

The rate appealed against was therefore amended and restored to the former amounts—namely, £722 gross, and £613 15*s.* net rateable value, in conformity with the judgment.

The question for the opinion of the Court of Queen's Bench is, whether the above decision of the Court of Quarter Sessions was wrong in point of law.

If this question be answered in the negative, the order of Sessions is to stand confirmed. If it be answered in the affirmative, the order of Sessions is to be quashed, and the rate appealed against confirmed.

Mellish, Q.C., and Hannen, for the appellants, were stopped.

Gray, Q.C., Walford, and Taylor, contended that the fixed machinery enhanced the value, and ought to be included in the rate; Mather *v.* Fraser, 2 K. & J. 536; Fisher *v.* Dixon, 12 Cl. & F. 312; Hayley *v.* Hammersley, 30 L. J. C. H. 771; R. *v.* Haslam, 17 Q. B. 220; R. *v.* Castleton, 33 L. J. M. C. 179.

JUDGMENT, FROM THE SHORTHAND WRITERS' NOTES.

The Lord Chief-Justice.—This case appears to me to be a perfectly plain one. It is quite clear that you cannot rate chattels as such, and it is equally clear that the machines now in question, the value of which it is sought to add to the rateable value of the house for the purpose of assessment are chattels. They are not in any way attached to the freehold. They are fastened to it, it is true, but they are not affixed to it so as to make them part and parcel of the freehold. That is decided on the most satisfactory and conclusive grounds in the case of Hellawell *v.* Eastwood, which has been referred to in the argument. There the machinery in question consisted of mules used for spinning cotton, fixed by means of screws, some into the wooden floor of the mill, and some into lead, which had been poured in a molten state into holes in stones. Now, Mr. Baron Parke, in delivering the judgment of the Court says: "In considering this case we cannot doubt that the machines never became a part of the freehold. They were attached slightly, so as to be capable of removal, without the least injury to the fabric of the building or to themselves; and the object and purpose of the annexation was not to improve the inheritance, but merely to render the machines steadier and more capable of convenient use as chattels," which is exactly

similar to this present case. "They were never a part of the freehold any more than a carpet would be, which is attached to the floor by nails, for the purpose of keeping it stretched out, or curtains, looking-glasses, pictures, and other matters of an ornamental nature, which have been slightly attached to the walls of the dwelling as furniture, and which is probably the reason why they and similar articles have been held in different cases to be removable."

Now the facts are exactly the same in this case as they were in the case of Hellawell *v.* Eastwood, and on the authority of that case which I conceive to be perfectly well founded, and if any other judgment or decision differs from it, I abide by the decision in Hellawell *v.* Eastwood, and I say these are not affixed to the property but are chattels. But I quite conceive that the recent cases have established this, that if you have things that are only so annexed to the freehold as that they still retain their character of chattels, and do not become so affixed to the freehold as to become part and parcel of it, you may in assessing the rateable value of the building, take them into account, provided always that they have been so attached to the building with the intention that this attachment should be a permanent one, and under such circumstances as that upon a demise of the building that the chattels in question connected with the building would pass with it; such was the case of the gas-works, such was the case of a certain portion of the articles referred to in the case of the Queen *v.* the North Staffordshire Railway Company; in both these cases the chattels had been so permanently connected with the building, as that they would pass under a demise of the building, and if that were the case here I shall agree that though "chattels," they would be so far part of the building as that they should be taken into account in assessing the rateable value of the building, but the finding of the Sessions appears to me to be directly to the contrary. They have not been permanently attached to the building. They have been simply attached to the building for the purpose of steadying the machines for the better and more convenient use of those machines. That seems to me to make all the difference, I will assume with Mr. Gray, and his learned coadjutors, that the building would be let as a silk mill, but it does not follow that these machines have been so connected with the building as to pass with it, or that their use would not be severable from the use of the building. These machines are common things in Lancashire. They are carried from one

manufactory to another, and can be removed from one room to another. They are not so permanently fixed to the building as in the case of the gas works, and the case of the North Staffordshire Railway, and I think the finding of the Quarter Sessions as, I think, I said in the outset, really concluded the case. Therefore my judgment is for the appellant.

Mr. Justice Blackburn.—I am quite of the same opinion affirming the decision of the Court of Quarter Sessions. I do not think it necessary to enter into details at all, because in looking at the Queen *v.* Lee, which is the last case on the subject, it seems to me that all that was there said is applicable to the present case; and having read over what was there, I do not see the slightest reason to change or alter the opinion which was then expressed, both by myself and by the other judges to the same effect, and applicable to the same case. I think there is no doubt the Sessions were right.

In the first place it is quite clear, as the counsel for the appellant has been urging before us, that in taking the rateable value of the demisable property, the fixed property you are to take into account, all things forming a part of the property which really enhances the value of the property. It is quite clear in considering the rateable value you are not to consider the walls of his house as walls, nor the steam-engine fixed to the ground as a steam-engine, but you are to consider the rateable value of the walls as capable of holding chattels for working silk, and the chattels as instruments for working it. Those are things to be taken into account for the purpose of working it, and those things have been taken into account in considering the rateable value of the warehouse, namely, the walls of the building and the steam-engine; but then the contention here is not only is it to be considered what would be the additional rent which would be given by a hypothetical tenant, or the actual tenant for the steam-engine and the factory, but seeing that it is capable of containing the machinery that you are to put an additional rate for the value of the machinery which is contained in it. Now, upon that the question comes entirely to whether they are part of the premises or not. I quite agree with what is said in the case of the Queen *v.* Lee. It is not a question whether they are severed or not. Things may be quite severed by the tenant or the sheriff, or anybody else; but as long as they are a part of the premises, they are to be taken into account as part of the rateable value, not as enhancing the rateable

value, but merely as being in themselves a part of the premises; and as was pointed out in the Queen *v.* Lee, following out the decision in Hellawell *v.* Eastwood, the question was whether they were rateable or distrainable. The great question was whether they were attached to the premises for the permanent and continued enjoyment of them, attached to them as accessories, in which case they become part of the premises, or whether they were merely attached to them to steady, and more advantageously enjoy the machines, and which you are to take into account as well as the attachment. In taking that view I will only observe that Vice-Chancellor Wood, in the case he decided, seems to have decided it perfectly right and perfectly consistent with the case of Hellawell *v.* Eastwood, except that he seems not to have been aware that you cannot distrain the tenant's fixtures, although he has the right to remove them, and he seems to have thought he was against Hellawell *v.* Eastwood, when he was in fact deciding with it.

Mr. Justice Mellor.—I am of the same opinion. It depends on the law as to what is rateable to the relief of the poor, and that which is rateable to the relief of the poor, is land and houses, are made more valuable by that which is annexed and which was intended for the permanent use of the house in a particular manner, that is the subject of the rate because the house is made more valuable by it, but it appears to me that there is no sensible distinction between this case and the case of a ready furnished house, supposing a house is furnished for the purpose of letting into lodgings, you might say that the furniture there was rateable as the machinery here is rateable. Nothing is more common than to speak of a "furnished mill" and an "unfurnished" mill. To make a mill capable of been treated as a mill, and of being described as a mill, you must have something more than the mere building. You attach to it a steam power, and with the steam power and the building combined it is let at a much higher rent, because the value of the building is greater of course by the addition of the steam power, but when you come to the case common in the manufacturing districts, the owner of the mill provides it with a steam-engine and furnishes steam power to a variety of persons, who each bring to the various parts of the mill, their own furniture, that is to say their own machinery, which is fixed for the purpose of us, not fixed for the purpose of benefiting the steam-engine, but merely for the benefit and use of the person who brings it. That seams to me to be the test, with the steam power it is nothing more

nor less than a furnished mill, and without it, it is an unfurnished mill, and the machinery in a mill is very much like the case of furniture in a house let ready furnished to people, and I do not see any distinction; at all events I am perfectly satisfied that this case is governed by the Queen *v.* Lee, and I think the decision there is perfectly applicable to the present case, and cannot be distinguished from it. That case was founded upon Hellawell *v.* Eastwood, which is also perfectly satisfactory, and the reasoning in which, as it appears to me, is also conclusive of this case; and I cannot find (notwithstanding all that has been urged) any distinction between this case and the case of the Queen *v.* Lee.

Mr. Justice Shee.—I am of the same opinion. The machinery in the premises in question were of two kinds, consisting partly of the machines on which this question has arisen. There was also other machinery. By the 5th paragraph it was stated "that the machines in respect of which the question arises were all driven by water or steam power; and for this purpose there is a water wheel and a steam-engine, the motive power from which is communicated to the several machines by certain shafts and gearing, commonly known as main or driving gearing, or main shafting." Now, the Quarter Sessions determine that the steam and water power and the main shafting were rateable, and why? Because they were fixtures which added permanently to the value of the premises. They were permanently fixed to it, and unless they were there constituting the motive power by which the manufactory was carried on, no manufacture could be carried on; but as respects the property in question, this is evidently of the nature of personal property or chattels, it is expressly said that they are separate. "The machines in question are separate and distinct from each other, are movable at will, by being taken down and put up either for repairs and arrangement; a change for use of the building from the silk trade to any other factory purpose, or any other cause, without damage or injury either to the machinery or to the buildings, and are commonly bought and sold, used and received as chattels."

It seems to me it would be impossible to hold that property of this description could be rated to the relief of the poor, without holding that all personal property should be rated to the relief of the poor. Therefore it seems to me that the Sessions have come to the right conclusion.

Judgment for the appellant.

OBSERVATIONS ON THE HALSTEAD CASE.

Under this judgment the Halstead silk mill is, with the exception of the engine-house, and engine and water-wheel, simply rated *as a warehouse for the looms and machines*, and not as a current-going mill, or at the rent which it might reasonably be expected to let as a silk mill.

The learned Judges appear to have considered their judgment in the Halstead case in conformity with the decision in the Phœnix gas case, but it is contended that the decision in the Halstead case overrules the principles laid down in the Phœnix gas case, in which case Hellawell and Eastwood's case was urged upon the Court, "but urged in vain," except as regards the meters, which did not form any part of the gas works, and were, in fact, not fixed on the company's premises, but on the premises of the gas consumers, so that if any hereditaments were enhanced in value by the meters, it was the hereditaments in the occupation of the gas consumers.

In the Phœnix gas case, the Court of Quarter Sessions found as a fact that a tenant would, according to the practice and course of business in letting and hiring gas works, have to take to and find capital for the retorts, which were distinct and severable from the basement floor; the utensils, including purifiers, steam-engines and boilers, and the movable part of the gas holders; and the trade fixtures, such as pumps and exhausters; and allowed interest and tenants' profits on the capital invested in the retorts, utensils, and tenants' fixtures, and treated the same as not rateable; but the Court of Queen's Bench held the Sessions were wrong, except as to the meters, and the Lord Chief Justice, in his judgment, referred to the decisions in the Southampton Dock Company, and the North Staffordshire Railway Company, and the Court adhered to the principle laid down in these cases (see pages 6 and 8 of Report).

The principle uniformly laid down by the Courts in rating, previous to the Halstead case was, that "*the parish officers are to consider not drily* and only what would legally pass by a demise of the property, but all the existing circumstances of it, whether permanent or temporary, however arising or secured, which would reasonably influence the parties to a negotiation for a tenancy as to the amount of rent to be asked or given." And "that real property ought to be assessed according to its actual existing value as combined with the machinery,

without considering whether the machinery be real or personal property, or whether it be liable or not to distress or seizure under a writ of *fi. fa.*, or whether it would go to the heir or executor, or at the expiration of a lease to the landlord or tenant." And that things which were not rateable might enhance the value of things which were rateable.

But, in the Halstead case, the Court of Queen's Bench followed the principle laid down by the Court of Exchequer in Hellawell *v.* Eastwood and others, where the Court decided certain cotton spinning machines were liable to distress for rent, and were not part of the freehold. The following is a copy of the report of Hellawell *v.* Eastwood's case, so far as it relates to the machinery :—

HELLAWELL *v.* EASTWOOD AND OTHERS.

20 Law Journal (N.S.); Exch. 16 (Hilary Term, 1851.) Replevin—Court Baron of the Honour of Pontefract; County Courts Act, 9 & 10 Vict., c. 95. Trespass—Distress—Machines fixed to floor.

The defendant being the landlord of certain premises occupied by the plaintiff, seized as a distress for rent certain cotton spinning machines, which were fixed by screws, some into the wooden floor, and some into lead, which had been poured in a melted state into holes in the stone for the purpose of receiving the screws. The machines having been replevied by a replevin issued out of the Honour Court of Pontefract, the defendant entered and seized them a second time.

Held, secondly, that the machines never became part of the freehold, and were distrainable.

Parke, B.—There is a case of Hellawell *v.* Eastwood argued a few days ago, when a part of the case was disposed of. The question remaining to be disposed of in this case is, whether cotton spinning machines which were fixed by means of screws, some into the wooden floor, and some into lead, which had been poured in a melted state into holes in the stone, for the purpose of receiving the screws, were by law distrainable for the rent of the mill in which they were affixed. Before the machines were so attached they were mere chattels, and undoubtedly were distrainable chattels, and the question is, whether they lost that character by being attached to the fixture in the manner described. This question is to be determined exactly in the same way as it would have been before if the statutes on the subject had not passed. . . . .

The only question, therefore, is, whether the machine when fixed was part of the freehold, and this is a question of fact depending on the circumstances of each case, and principally on two considerations; *first, the mode of annexation to the soil or fabric of the house, and the extent to which it is united to them, whether it can easily be removed integre, salve, et commode*, or not, without injury to itself or the fabric of the building. Secondly, on the object and purpose of the annexation, whether it was for the permanent and substantial improvement of the dwelling, in the language of the civil law, *perpetui usus causa*, or merely for a temporary purpose (see the Year Book, 20 Hen. 7, c. 13), or the more complete enjoyment and use of it as a chattel. Now, in considering this case, we cannot doubt that the machines never became a part of the freehold. They were attached slightly, so as to be capable of removal, without the least injury to the fabric or the building, or themselves, and the object and purpose of the annexation was not to improve the inheritance, but merely to render the machines steadier, and more capable of convenient use as chattels. They never were part of the freehold any more than a carpet would be, which is attached to the floor by nails, for the purpose of keeping it stretched, or curtains, looking-glasses, pictures, and other matters of an ornamental nature, which have been slightly attached to the walls of the dwelling as furniture, and which is probably the reason why they and similar articles have been held in different cases to be removable. The machines would have passed to the executor. That is laid down by Lord Lyndhurst, in the case of Trappes *v.* Harter. They would not have passed by the conveyance or the demise of the mill. They never ceased to have the character of movable chattels, and were therefore liable to the defendants' distress. The result will be that the plaintiff's rule is discharged, and the defendants' rule made absolute.

EFFECT OF DECISION IN THE HALSTEAD CASE.

Shortly after the decision of the Queen's Bench in the Halstead case, several points were raised, and cases stated for the opinion of the Superior Courts, as to the rateability of sleepers and rails, charcoal cylinders, and distillery plant. And the decisions in these cases are said to be conflicting, for instance, the Court held the sleepers and rails forming a railway were rateable, and also that charcoal cylinders, which were not affixed to the freehold, were also rateable, but they held distillery plant was *not rateable.*

SLEEPERS AND RAILS HELD RATEABLE.

The Great Western Railway Company raised the question of the rateability of the sleepers and rails, forming part of their railway, in the county of Wilts, the company contended on the authority of R. *v.* the Overseers of Halstead, that the rails and timbers were in the nature of furniture or stock in trade, provided out of tenants' capital; but the Court held the sleepers and rails were substantially an addition to the freehold, and during the argument, Mr. Justice Lush asked if they "would not pass as land in a mortgage deed?"

The following is a copy of the report of the case from the *Justice of the Peace*, October 29th, 1870:—

(Court of Queen's Bench, January 29th.)

GREAT WESTERN RAILWAY COMPANY, APPELLANTS, *v.* MELKSHAM UNION, RESPONDENTS.

Poor rate—Railway—Sleepers as enhancing value of Land.

In assessing a railway company to the poor rate in respect of their occupation of the land by their rails and sleepers, the value of these is to be taken into account as enhancing the value of the land occupied.

1. The Great Western Railway Company are the occupiers of three miles of railway in the parish of Trowbridge, in the county of Wilts, and are assessed for the poor rate in the sums of £900 for their railway, and £67 for their station respectively.

2. A rate was made upon this assessment on the 7th day of January, 1869, and against this rate the company appealed to the Wiltshire Quarter Sessions.

3. The company, upon acquiring possession of the land (under the powers of the Wilts, Somerset, and Weymouth Railway Acts), placed rails upon the surface for the purposes of assisting the transit of their trains.

4. The timbers are laid on ballast, and tied together by transoms; they are in no way fastened to the ground, but are packed up by the ballast to their proper levels. Longitudinal timbers are fastened together, and kept in proper guage by the transoms and by strap bolts.

5. Upon the surface of the longitudinal timbers the iron rails are laid, and through holes in the flanges of the rails bolts or screws pass down to the other side of the timbers.

6. The rails are capable of being removed from time to time by taking out the bolts, and are so removed for the purpose of the repair of the timbers, or for the purpose of renewing the rails.

7. If it is desired to alter a curve, the whole line thus constructed is capable of being moved laterally, and can also be raised or lowered. If the line were moved laterally, it would be necessary, first to clear the way by moving the ballast, and the line could not be moved latterly without first moving so much of the ballast as was above the bottom of the timbers.

8. In the parish of Trowbridge the rails and timbers are placed on the surface as above described.

9. The rateable value of the land without the rails and timbers would be £90 instead of £900.

The question for the opinion of the Court is whether the said rails and timbers are rateable in addition to the land, or whether they are in the nature of furniture or stock in trade provided out of tenants' capital.

If the Court shall be of opinion upon the facts stated that the said rails and timbers are not rateable in addition to the land, but are in the nature of furniture or stock in trade provided out of tenants' capital, then instead of the said rates appealed against standing and being confirmed at £900 and £67 respectively, the said last-mentioned rate of £67 is to stand and be confirmed, but the first-mentioned rate of £900 is to be reduced to £90.

Field, Q.C., for the appellants, contended that the sleepers were in the nature of chattels or furniture, and not rateable. They would not pass with the freehold. They are not inserted into or attached to the soil, but merely rest upon it, having some ballast to steady them. R. *v.* Halstead, 32 J.P. 118.

Lush, J.—Would they not pass as "land" in a mortgage deed? for, if not, the mortgagor could remove all the sleepers and rails.

Cockburn, C. J.—How does this differ from the case of the foundations of a house resting on a bed of concrete? You could not say the house was not part of the freehold.

Kingdon, Q.C., and Ravenhill, for the respondents, were not called upon.

Cockburn, C. J.—I think on the facts that these sleepers are substantially an addition to the freehold, and are properly regarded in the amount of the rate.

Mellor, J.—There can be no doubt they give an additional value to the land. They are therefore properly included as an item of value in the rate.

Lush, J., concurred.

Judgment for respondents.

CHARCOAL CYLINDERS AND COOLERS HELD RATEABLE.

In R. *v.* Brinjes, it was also contended on the authority of the Halstead case, that certain cylinders and coolers used in the manufacture of charcoal, but not affixed to the freehold, were not rateable; but the Court of Quarter Sessions held that the cylinders and coolers were so attached to and connected with the premises as to form part of the premises, and the Court of Queen's Bench confirmed the order of sessions.

The following is a copy of the report of the case from the *Justice of the Peace*, July 22nd, 1871 :—

(Court of Queen's Bench, February 2nd.)

REG. *v.* BRINJES.

Poor rate—Charcoal burning apparatus—Cylinders and coolers—Chattels part of the realty—Rateable value.

B. was the occupier of premises consisting of buildings and plant for reburning animal charcoal. Over each furnace were apertures in the brickwork to receive cylinders, which revolved and deposited charcoal received from a shoot into coolers, and thence into trucks on wheels which were placed below the coolers. The cylinders and coolers were not fastened to any part of the premises, but were essential parts of the machinery.

Held, *that as the cylinders and coolers were essential parts of the machinery, and intended to be permanently used as such, they were part of the rateable premises.*

At the General Quarter Sessions of the Peace holden for the county of Middlesex, on the 30th day of October, 1869, an appeal by John Frederick Brinjes against a poor rate made by the trustees, vestrymen and overseers of the poor of the parish of Saint Mary, Whitechapel, in the said county, was heard, and the rate was confirmed subject to the following case:—

The appellant was rated at £200 for premises in Back Church Lane, in the said parish, the premises consisting of buildings and

plant for carrying on the business of a re-burner of animal charcoal, according to a patent of the appellants. The rate as to the building was admitted. The plant and machinery consisted of erections for furnaces with the furnaces in them, and of fixed machinery for the purpose of passing the charcoal over the furnaces through certain cylinders to be mentioned hereafter, and of causing such cylinders to revolve. Eight of the furnaces are on the north side of the building, and four of them are on the south side of the same. The rate as to the plant, machinery, and furnaces was also admitted. Over each of the twelve furnaces there were two apertures left in the brickwork, one under the other. Into these apertures were placed two cylinders, and when in position the upper one received from a shoot the charcoal, and after revolving poured it through a shoot into the lower one, immediately over the furnace, and this too revolving, poured it through a shoot into coolers below, from which it fell into movable trucks upon wheels, and by them was wheeled to wagons or carts to be carried away. These trucks it was admitted were not rateable. At the one end of each of the eight top cylinders on the north side of the building there is a large heavy wheel with teeth fixed firmly into the middle of the end, and forming part of the said cylinders, and these top cylinders are made to revolve by a spur or pinion wheel upon a short shaft, the teeth of which wheel fit into the wheel fixed to the cylinders. A heavy chain is so placed in each case round the two cylinders that it fits into teeth placed on the outside of the lower cylinders, and the two cylinders being so connected together the revolution of the top one causes the bottom one also to revolve. The spur or pinion wheels are worked by steam power. The shoots through which the charcoal passed are not in any way fastened to the cylinders, but are only made to fit into a portion of the machinery. When it becomes necessary to take out these sixteen cylinders on the north side of the building they can be drawn out without disturbing the brickwork, but the top cylinders cannot be taken out without unfixing and removing the wheels at the end of such cylinders, and the chain must be removed before either cylinder can be removed. All the said cylinders are placed in the apertures in the brickwork, and rest upon rollers, which rollers are attached to the rest of the machinery, and must be removed before the cylinders can be removed. The upper cylinders last about two or three years; the lower ones about four months, and are then replaced by fresh

cylinders. They are also taken out at times for repairs, and sometimes those in use in one furnace are taken out and applied to another furnace, though usually the cylinders remain in position until worn out. There are eight coolers under the sixteen cylinders on the north side of the building. They weigh about fifteen cwt. each, and are adapted to the rest of the machinery, but they can be lifted by hand without removing any part of the machinery. They are placed below the lower cylinders upon a stage which forms part of the building; they are not fixed or fastened in any way either to the ground, the building, or the machinery, but simply remain in position by their own weight, receive the charcoal through the shoot connected with the machinery from the lower cylinder, and after holding it for a time discharge it into trucks below. At the trial a model showing one set of cylinders, the furnaces and the coolers on the north side of the building, was put in evidence. The same model is to be produced in the Court on the argument of this case, and is to be referred to as part of and to explain this case. The appellant contended that the cylinders were not fixed so as to form part of the machinery, and must be considered as ordinary boilers suspended over the furnaces, and, therefore, not rateable; and that the coolers also were not fixed so as to become part of the machinery, and must be treated like the movable trucks on wheels into which the coolers poured the charcoal, which movable trucks on wheels were admitted not to be rateable. The respondents contended that the cylinders and coolers were rateable, as they formed part of the machinery, without which the works could not proceed, and that as they were connected with the premises and intended to remain permanent appendages to them for the purpose of carrying on the process of re-burning animal charcoal, they were to be taken as increasing the rateable value of the premises. The Court of Quarter Sessions was of opinion that the cylinders and coolers were not chattels, but that they were so attached to and connected with the premises as to form part of the premises, and that such cylinders and coolers were therefore properly taken as increasing the rateable value thereof. Machinery for the same purpose on the south side of the building was alleged to differ from that on the north, and the question as to its rateability is to remain open until the decision of this Court has been obtained.

The question for this honourable Court is, first, whether the said cylinders on the north side are rateable; and, secondly, whether the

said coolers on the north side are rateable. If both are rateable the rate and order of sessions to be affirmed. If either the cylinders or the coolers alone are rateable, or if neither be rateable, the case to be sent back to sessions to settle the rateable value.

W. H. BODKIN, Assistant Judge.

Poland, in support of the order of Quarter Sessions, contended that the cylinders and coolers were rightly treated as part of the realty or rateable premises. It was chiefly a question of fact. R. *v.* Halstead, 31 J. P. 373; R. *v.* Leigh, L. R., 1 Q. B. 241.

Metcalfe, *contra*, contended that the cylinders and coolers were not fixed in any way, but were mere chattels used on the premises like a workman's tools, or the trucks that carried away the charcoal, and which were equally useful and necessary as part of the whole process. The case finds that they are not fixed, and there was no reason for holding them part of the rateable premises.

Mellor, J.—I think the Quarter Sessions were right. If we decided otherwise we would have to hold that what was an integral part of a fixed machine could be taken away and treated as no part of the premises. In all such cases we must look at the nature of the attachment of the things to the freehold. The question is, whether the machinery and apparatus are complete without these coolers and cylinders. There may be parts of a fixed machinery not fastened and yet so connected that they cannot be moved without disturbance to the inheritance. Here there were grooves in the brickwork and machinery to admit these cylinders and coolers, and when so admitted they were part of the whole, and if the premises were demised those cylinders and coolers would go with them. You cannot diminish the rateable value by taking away any of the essential parts of the apparatus. We do not decide against any of the cases cited. We consider that the cylinders and coolers not only enhance the value of the thing rateable, but are an essential part of the whole machinery.

Lush, J.—I am of the same opinion. Mr. Metcalfe asks us to introduce a new element into this class of cases, for we might take any essential part of the machinery by itself, and say it is separable and movable, and therefore no part of the whole. But I cannot doubt that if a building having fixed machinery adapted for burning charcoal, though some part of the machinery was not actually fixed to the walls, were demised, such part would pass as part of the things demised. It is found that the machinery is fixed, and this being an

essential part of the machinery, must be treated for the purpose of this case, fixed also.

Hannen, J.—concurred.

Order of sessions confirmed.

The decision in these two cases are in accordance with the principles laid down and acted upon by the Courts previous to the Halstead case.

PUMPS, MASH TUNS, TANKS, AND OTHER DISTILLING FIXTURES, HELD NOT RATEABLE.

A third case was stated in 1874 for the opinion of the Court of Queen's Bench, as to the rateability of certain distillery fixtures, and counsel for the appellants relied upon the Halstead case, and the Court gave judgment for the appellant.

The following is a copy of the report of this case from the *Justice of the Peace*, May 15th, 1875:—

(Court of Queen's Bench, 18th November, 1874.)

CHIDLEY, APPELLANT, *v.* CHURCHWARDENS, &C., OF WEST HAM, RESPONDENTS.

Poor rate—Machinery—Distillery fixtures—Heavy tanks, pumps, &c.—Rateability.

In a distillery there were tanks so large as to form the entire roof of buildings, refrigerators, mash tuns, pumps, wash backs, and reservoirs. The articles which were all heavy, and in some cases screwed down to steady them, constituted with fixtures one continuous process necessary for distilling. But all were complete and separate articles bought and sold as such, and capable of being disconnected and sold again.

Held, that as the articles were merely steadied by their own weight or with the help of screws and could be detached and sold separately, they were not fixtures, and not included as part of the rateable value of the building for the purpose of the poor rate.

This was a case stated on appeal against a poor rate upon a distillery occupied by the appellant in the parish of West Ham, covering two and a half acres. The rateable value was £1,100 made up as follows:—Land, buildings, machinery, vessels, and apparatus £414; steam-engines £90; steam boilers and pipes £86 10*s.*; total £590 10*s.* These were admitted by appellant to include fixtures, and to be properly rated. There were other items which the appellant con-

tended were not fixtures and not rateable, namely, tanks forming the roofs of three houses respectively, valued at £65; boiling backs, refrigerators, and water heater, valued at £65; mash tuns, pumps, under backs, wash backs, reservoir, distilling apparatus, valued at £378 10s.; total £510.

One or two of the articles were described as follows:—

24. *The roof of the malt crushing or meal room* is formed by a cast-iron tank resting on iron girders 35 feet by 16 feet, which is used as a liquor back or water tank; the water is pumped into it by means of pipes connected with a force pump, hereinafter described, in eight-horse engine-house, and the water passes from this tank to supply the boiling backs, also hereinafter mentioned, by means of pipes connecting them respectively.

25. The boiling water for the mash tuns is heated in wooden vessels called boiling backs by means of steam supplied from the large steam boilers. The boiling-house contains three 2½ inch fir wood boiling backs with steam connections. Two of these will contain 20,000 gallons each, the other will contain 26,000 gallons. They stand on wooden girders which lie on brick piers built up close to the walls of the building. There is no flooring under them, but the flooring surrounds them at a distance of about two inches. They are supplied with cold water by pipes passing through the walls of the building from the water tank mentioned in paragraph 24. A pipe from the large steam boilers passes through the walls separating the boiling house from the steam boiler house over the top of each back and thence into the water inside, through which hot steam for the purpose of boiling the water is spread by means of perforated copper branches radiating from such pipes. Another pipe is bolted on to the bottom of each boiling back which passes through the walls of the building into the tun room, and through which the boiling water is conveyed into the mash tuns; there are valves in such pipes for regulating the supply.

26. The tun room contains two cast-iron mash tuns 28 feet in diameter, with false bottoms and agitating apparatus, driven by the 60-horse steam-engine. *The mash tuns* are made of plates rivetted together and stand upon brick piers about 6 feet high; they pass through the upper flooring, which surrounds them at a distance of 2 inches; each tun is supplied with hot water by the pipe coming from the boiling backs, which pipe is bolted to the bottom of the

tun. The agitating or mashing apparatus consists of an upright shaft in the middle of the mash tun with branching arms which are made to revolve within the tun by means of a shaft and wheels connected with and worked by the 60-horse engine. There are four iron pipes attached by bolts to the bottom of each mash tun, through which pipes the liquid or wort is passed into the cast-iron underback; such pipes are also bolted to the underback. There is also another iron pipe bolted on to the bottom of each mash tun for the purpose of conveying the grains from the mash tun (which is done by means of pumps in the basement of the tun room); this pipe passes through the wall of the building over the top of the roofs, and discharges the grains into the tank cast-iron forming the roof of the grains-house.

27. The cast-iron underback stands on the lower floor of the tun room beneath the mash tuns, and is connected with them as above-mentioned. Another pipe is also bolted on to the underback through which the worts are pumped by means of another set of pumps in the basement of the tun room, which pipe passes in a similar manner to the pipe for carrying off the grains, and discharges the worts into the other portion of the cast-iron tank forming the roof of the grain-house.

28. In the basement of the tun room there are the set of pumps used for pumping the grain as above-mentioned from the mash tuns into the grains' receiver, which are worked by the 60-horse engine by means of a shaft or gearing, which passes through the wall dividing the engine-house from the tun room, and another set of pumps for pumping the worts as above-mentioned, which are worked in like manner. There is also a single pump used for pumping water into the tank over the meal room, and a set of three pumps used for pumping the spent wash from the wash tanks mentioned in paragraph 18, into the fir wash receiver mentioned in paragraph 40. The single pump and the set of three pumps lastly mentioned are worked by means of the 3-horse engine described in paragraph 16 as being in the basement of the tun room.

31. In the 8-horse engine-house there are also several pumps which may conveniently be described here. There is a set of three 7 inch brass barrel wash pumps worked by the 8-horse engine, and used exclusively for pumping the wash from the wash backs above-mentioned to the wash. Also a set of three 4 inch wash pumps also worked by the same engine, and used exclusively for the purpose

of pumping the wash from the wash charger or from the wash reservoir into the distilling apparatus. They are connected with the wash charger and wash reservoirs by pipes bolted on to them respectively, and with the still by other pipes bolted on to it. There are also two hot feints' pumps worked by the same engine, and used for pumping the hot feints from the feints' receiver, to be presently mentioned, back into the top of the still. They are connected with the feints' receiver by a pipe passing through a wall of the building, and bolted on to the feints' receiver, and with the still by a pipe passing through the upper floor of the building, and bolted on to the top of the still; the lastly mentioned pumps are fastened by bolts through the wall of the building to iron plates on the other side. There is also a force pump worked by the same engine used for supplying water to the steam boilers; such pump is connected on the one side by means of a pipe passing under ground to a water reservoir in the grounds, and on the other by a pipe passing through the walls of the building into the steam boiler-house, and connected with the steam boilers.

32. In a tiled leanto adjoining the 8-horse engine-house there is a fir wash charger for holding 25,000 gallons, with rouser and shafting, which is driven by the last-mentioned engine. The wash charger stands on brick piers, and is used for receiving the wash from the wash backs, whence it is brought by means of the 7-inch pumps previously mentioned through the iron pipe which passes through the wall of the building, and is bolted on to the top of the wash charger. At the bottom of the wash charger a pipe is bolted to it connecting it with the wash reservoir, to which the pipe is also bolted, having a branch connected with the 4-inch pumps previously described, and by means of which the wash is pumped from the charger into the distilling apparatus.

40. In the grounds there is a fir wash receiver capable of containing 10,000 gallons. A copper pipe passes from the brick wash backs, mentioned in paragraph 18, to a set of pumps in the basement of the tun room, and thence into the fir wash receiver, and by means thereof the wash is pumped from the brick wash backs into the fir wash receiver, whence it is drawn off by means of pipes into casks.

41. All the vessels, machinery, and apparatus hereinbefore described, are necessarily used in the process of distilling now carried on upon the premises, and no portion thereof (except the engine

and pumps in the cask store), can be disconnected from the other portions thereof without destroying the continuity of the process now carried on on the premises.

42. Although the operations carried on by the appellant are in that sense continuous from the beginning to the end, it is not essential they should be, for they are really distinct operations, and they become continuous because the product being liquid it is necessarily contained in vessels, and passes from one container or vessel to another by a pipe or conduit of some kind fixed to both containers or vessels, but the whole of the processes are necessary for the production of the raw spirit, and although the machinery, vessels, and apparatus are connected together by the pipes or shoots to the extent and in the manner hereinbefore described, yet they are capable of being easily disconnected and of being altogether removed without altering the buildings, and, in fact, some of them are occasionally taken down for the purpose of cleaning or repair.

43. Wherever in the above description the articles are spoken of as "bolted" or "fastened" together, the mode of connection intended is the ordinary iron screw bolt and nut, which passes through the two materials to be fastened, and the nut of which can be unscrewed and the bolt withdrawn, leaving the articles separated. The cast-iron pipes from one room to another are in lengths of a few feet, with flanges bolted together, and the pipes either run through holes in the walls or the doorways made specially for the purpose without in either case touching the buildings in accordance with the excise regulations.

44. It is to be understood throughout the above description that, except where fastenings and connections are stated, all the machinery, vessels, and apparatus in dispute are retained in their places by their own weight merely. That before being connected as described, each of them is a separate and complete article in itself, known in the trade as such. That all of them are bought and sold as separate and complete articles, and that most of them are bought and sold second-hand as well as new.

45. The buildings and premises as they stand at the present time are fitted and of more value for carrying on the business of a distillery than any other business, and they could by removing the present machinery, vessels, and apparatus be adapted to other manufacturing purposes.

47. The Court is to be at liberty to draw any inferences of fact, or in case they consider further information is required on any point to remit the case for amendment by the parties, or, in case of their differing, by a barrister to be named by the court.

48. A plan showing the situation of the several buildings and machinery and the pipes connecting the same respectively has been prepared and signed by the solicitor for the appellant and respondents respectively, and may be taken and referred to as part of this case.

49. The questions for the opinion of the Court are, whether the machinery, vessels, and apparatus hereinbefore described, and fully enumerated and valued in paragraph 46 as in dispute, or any part of them, are liable to be rated.

50. If the Court should be of opinion that the whole of such machinery is liable to be rated, then both the rates appealed against are to be confirmed by the Court of Quarter Session.

51. If the Court should be of opinion that any portion of such machinery and apparatus is not liable to be rated, then the amount agreed as the rateable value of such portion or portions (as mentioned in paragraph 46) is to be deducted from the said sum of £1,100, and the residue after such deduction is to be taken as the rateable value of the premises for the said rate made the 3rd day of January, 1872, instead of the said rateable value of £1,100, and the said rate is to be amended accordingly by the said Court of Quarter Sessions; and further if the amount of such deduction be not more than £300, in that event the said rate made the 28th day of June, 1871, is to stand confirmed by the Quarter Sessions at £800.

52. If the amount of such deduction be more than £300, then the residue of the £1,100, after such deduction, is to be taken as the rateable value of the premises for the said rate made the 28th day of June, 1871, instead of the said rateable value of £800, and the said last-mentioned rate is also to be amended accordingly by the said Court of Quarter Sessions. The Court is to deal with the question of the costs of and relating to the said appeals and this case, and determine by whom and in what proportions the same are to be borne.

M. Chambers Q. C., and Beasley, for apellant, contended that none of the disputed articles were annexed to the freehold, but merely stood by their own weight, and differed in no respect from ordinary chattels in a house or warehouse, which clearly were not rateable.

Clarke and Banbury, for the respondents, contended that though not annexed to the freehold, still these heavy articles were part of the entire system of apparatus and machinery used in the business, and so were rateable: R. *v.* Lee, L. R. 1 Q. B. 341; R. *v.* Guest, 7 A. & E. 951; R. *v.* Birmingham, 6 A. & E. 634; R. *v.* North Staffordshire Railway Company, 30 L. J. M. C. 68.

Chambers replied, and relied upon R. *v.* Halstead, 32 J. P. 118, which was the case of a silk manufactory where heavy machines steadied by iron screws to the floor were held not rateable.

Blackburn, J.—*In this case, which is perhaps not so stated as to bring out the precise point intended to be or which might have been raised, the Court is asked if certain articles described are liable to be rated.* There is no difficulty as to the rule of law on the subject, though there is considerable difficulty in applying the rule. Whatever is fixed to the realty so as to pass as landlord's fixtures in a demise of the premises must be taken to be part of the premises for the purpose of ascertaining its rateable value. The question what kind of fixtures comes under this description is treated at length in Holland *v.* Hodgson, L. R. 7 C. P. 328. In that case it is stated that, "The question must depend mainly on two circumstances as indicating the intention, namely, the degree of annexation and the object of the annexation. Where the article in question is no further attached to the land than by its own weight it is generally to be considered a mere chattel. But even in such a case, if the intention is apparent to make the articles part of the land, they do become part of the land. Thus blocks of stone placed one on the top of the other without any mortar or cement for the purpose of forming a dry stone wall would become part of the land, though the same stones if deposited in a builder's yard, and for convenience sake stacked on the top of each other in the form of a wall, would remain chattels. On the other hand an article may be very firmly fixed to the land, and yet the circumstances may be such as to show that it never was intended to be part of the land, and then it does not become part of the land. The anchor of a large ship must be very firmly fixed in the ground in order to bear the strain of the cable, yet no one could suppose that it became part of the land, even though it should chance that the ship-owner was also the owner of the fee of the spot where the anchor was dropped. An anchor similarly fixed in the soil for the

purpose of bearing the strain of the chain of a suspension bridge would be part of the land. Perhaps the true rule is that articles not otherwise attached to the land than by their own weight are not to be considered as part of the land, unless the circumstances are such as to show that they were intended to be part of the land, the onus of showing that they were so intended lying on those who assert that they have ceased to be chattels, and that on the contrary an article which is affixed to the land even slightly is to be considered as part of the land unless the circumstances are such as to show that it was intended all along to continue a chattel, the onus lying on those who contend that it is a chattel. In some cases, such as the anchor of the ship or the ordinary instance given of a carpet nailed to the floor of a room, the nature of the thing sufficiently shows it is only fastened as a chattel temporarily, and not affixed permanently, as part of the land. But ordinary trade or tenant's fixtures which are put up with the intention that they should be removed by the tenant (and so are put up for a purpose, in one sense only temporary and certainly not for the purpose of improving the reversionary interest of the landlord) have always been considered as part of the land though severable by the tenant. In most, if not all, of such cases the reason why the articles are considered fixtures is probably that the tenant indicates by the mode he puts them up that he regards them as attached to the property during his interest in the property." *Now I am not prepared to say that the various articles described in the present case may not be taken into account as enhancing the value of the premises, but that question is not asked, and we are only to say whether the things are rateable.* That depends, as is stated in Holland *v.* Hodgson, on whether they are annexed to the freehold, and if they are annexed in a certain sense, with what intent they were so annexed. Applying these rules it appears by the case that all the articles are chattels, well known in the trade, and sold separately both as new and as second-hand. They are not attached to the premises except in the sense that the weight of the article keeps it steady, and though one or two are screwed down and some attached to pipes, which again are attached to steam-engines, or to what are clearly fixtures, this alone will not make them fixtures. I thought at first that the two pumps were annexed to the freehold, but with some hesitation I now think they are not so annexed as to come within the rule. They are bought as

independent chattels, and though screwed down while used, still they can easily be unscrewed and again sold as chattels; and as the rest of the Court clearly hold they are not annexed to the freehold I agree with them. All the items thus are nothing more than chattels which rest and steady themselves by their own weight or with the slight assistance of a screw, and are not fixtures, and not rateable as part of the premises. Our judgment must therefore be for the appellant.

Lush, J.—I am of the same opinion. These cases are always difficult, owing to the things being often almost and yet not entirely fixtures. Still I think that none of those here described are fixtures. Looking at the 44th paragraph of the case, it is admitted that these things are chattels, and are capable of being severed and sold again as chattels. I do not think from the description given of the works that they are so annexed as to become part of the soil. As to the pump, I think it is not fixed, and that as it is capable of being sold again, and is fixed merely to steady it, it cannot be treated as a fixture. As to the tanks on the roof, they are not fixtures, and though it is said they form the roof itself of the buildings, still all that this means is that while they are there no other roof is required. That circumstance does not make it so annexed as to cease to be a chattel. On all the other points I agree.

Quain, J., and Archibald, J., concurred.

Judgment for appellant.

OBSERVATIONS ON THE WEST HAM DISTILLERY CASE.

It will be seen by Mr. Justice Blackburn's judgment that the court was asked an abstract question—that is "*if certain articles described are liable to be rated*," and the Court held the things described were not liable to be rated, but Mr. Justice Blackburn also said "I am not prepared to say that the various articles described in the present case may not be taken into account as enhancing the value of the premises, but that question is not asked." And he also said "the case is not stated to bring out the precise point intended to be or which might have been raised." Had this precise question been asked which might, and for the purpose of rating ought to have been asked, and the Court decided these articles were not rateable, or, were not to be taken into account as enhancing the value of the premises,

then this case would have overruled R. *v.* Haslam and Howarth, for nearly all the distillery fixtures are connected with the freehold in precisely the same manner as the leaden chambers in the chemical works, which were held rateable (see page 6 in Report) and no doubt if the distillery with all its fixed plant were to let, it would like the chemical works with the leaden chambers "*fetch a higher rent than could be obtained if the fixed plant were removed.*"

From the way in which the distillery case was stated and the qualified judgment of the Court it can scarcely be treated as any authority, and the exemption of machinery and fixed plant from rateability or taxation to the relief of the poor rests solely upon the authority of the Halstead case, which was decided on Hellawell and Eastwood's case. And if, in rating property to the relief of the poor under the statute of Elizabeth and the Parochial Assessment Act, it is to be considered what would pass with the realty, or what the demise would give a legal title to, then the decision in Hellawell and Eastwood's case, as an authority on rating, must be considered as overruled by the Court of Exchequer Chamber in Holland *v.* Hodgson, and by the House of Lords in Meux *v.* Jacobs.

In Holland *v.* Hodgson, it was held by the Court of Exchequer Chamber, that looms in a mill which were attached to the stone floors by means of nails driven through holes in the feet of the looms, and in some cases into beams which had been built into the stone, &c., *for the purpose of steadying them*, passed by the mortgage of the mill as part of the realty.

And in Meux *v.* Jacobs, it was held by the House of Lords that the fixtures of a public-house passed with the realty as part of the realty.

LOOMS, &c., HELD BY THE COURT OF EXCHEQUER CHAMBER TO PASS WITH THE REALTY UNDER A MORTGAGE OF THE MILL.

The Law Reports; Common Pleas Cases; Vol. VII. 1871 and 1872.

In the Exchequer Chamber.

HOLLAND AND ANOTHER *v.* HODGSON AND ANOTHER.

Fixtures—Mortgagor and Mortgagee.

The following is an extract from the case and report:—

The owner in fee of a worsted mill, at which he carried on the business of a worsted spinner and stuff manufacturer, mortgaged it

to the plaintiffs. By a deed of arrangement under the Bankruptcy Act, 1861, subsequently executed, the mortgagor assigned all his property to the defendants as trustees for the benefit of his creditors. Under this latter deed the defendants seized certain looms which were in the mill that was mortgaged. These looms were attached to the stone floors of the rooms of the mill by means of nails driven through holes in the feet of the looms, in some cases into beams, which had been built into the stone, and in other cases into plugs of wood driven into holes drilled into the stone for the purpose. It was necessary that the looms should be so attached for the purpose of steadying them, and keeping them in a true direction, perpendicular to the line of the shafting, by means of which the steam power was applied to them. It was impossible to remove the looms without drawing the nails; but this could be done easily, and without any serious damage to the flooring. The plaintiffs brought trover for the looms.

Held (affirming the decision of the Court below), that the looms passed by the mortgage of the mill as part of the realty, and the action was therefore maintainable.

The judgment of the Court (Kelly, C. B., Blackburn, Mellor, and Hannen, J. J., and Channell and Cleasby, B. B.,) was delivered by Blackburn, J. "..... There is no doubt that the general maxim of the law is, that what is annexed to the land becomes part of the land; but it is very difficult, if not impossible, to say with precision what constitutes an annexation sufficient for this purpose. It is a question which must depend on the circumstances of each case, and mainly on two circumstances as indicating the intention, viz., the degree of annexation, and the object of the annexation. When the article in question is no further attached to the land than by its own weight, it is generally to be considered a mere chattel (see Wiltshear *v.* Cottrell, 1 E. and B. 674, and the cases there cited). But even in such a case if the intention is apparent to make the articles part of the land, they do become part of the land (D'Eyncourt *v.* Gregory, Law Rep. 3 Eq. 382). Thus, blocks of stone placed one on top of another, without any mortar or cement for the purpose of forming a dry stone wall would become part of the land..... On the other hand, an article may be very firmly fixed to the land, and yet the circumstances may be such as to show that it was never intended to be part of the land, and then it does not become part of the

land. . . . . Perhaps the true rule is, that articles not otherwise attached to the land, than by their own weight, are not to be considered as part of the land, unless the circumstances are such as to show that they were intended to be part of the land; the onus of showing that they were so intended lying on those who assert that they have ceased to be chattels, and that, on the contrary, an article which is fixed to the land, even slightly, is to be considered as part of the land, unless the circumstances are such as to show that it was intended all along to continue a chattel, the onus lying on those who contend that it is a chattel. . . . . But ordinary trade or tenant's fixtures, which are put up with the intention that they should be removed by the tenant (and so are put up for a purpose, in one sense only temporary, and certainly not for the purpose of improving the reversionary interest of the landlord), have always been considered as part of the land, though severable by the tenant. . . . ." In Hellawell *v.* Eastwood, 6 x. 295 (decided in 1851), the facts as stated in the report are, that the plaintiffs held the premises in question as tenants of the defendants, under which a seizure was made of cotton spinning machinery, called "mules," some of which were fixed by screws to the wooden floor, and some by screws which had been sunk in the stone floor, and secured by molten lead poured into them.

Parke, B., in delivering the judgment of the Court, says: "This is a question of fact depending on the circumstances of each case, and principally on two considerations, first, the mode of annexation to the soil or fabric of the house, and the extent to which it is united to them, whether it can easily be removed *integre, salve, et commode*, or not, without injury to itself or the fabric of the building; secondly, on the object and purpose of the annexation, whether it was for the permanent and substantial improvement of the dwelling, in the language of the civil law, *perpetui usus causa*, or in that of the Year Book, *pour un profit de l'inheritance*, or merely for a temporary purpose, and the more complete enjoyment and use of it as a chattel." It was contended by Mr. Field that the decision in Hellawell *v.* Eastwood had been approved in the Queen's Bench, in the case of Turner *v.* Cameron, Law Rep. 52 B. 306. It is quite true that the Court in that case said that it afforded a true exposition of the law as applicable to the particular facts upon which the judgment proceeded, but the Court expressly guarded their approval by citing from the judg-

ment delivered by Parke, B., the facts upon which they considered it to have proceeded: "They were attached slightly, so as to be capable of removal, without the least injury to the fabric of the building or to themselves; and the object of the annexation was not to improve the inheritance, but merely to render the machines steadier and more capable of convenient use as chattels." As we have already observed, trade or tenant fixtures might, in one sense, be said to be fixed merely for a temporary purpose, but we cannot suppose that the Court of Exchequer meant to decide that they were not part of the land, though liable to be severed by the tenant.

The words "merely for a temporary purpose," must be understood as applying to such a case, as we have supposed, of the anchor dropped for the temporary purpose of mooring the ships, &c., and not to a case such as that of a tenant, who, for example, affixes a shop-counter for the purpose (in one sense temporary) of more effectually enjoying the shop whilst he continues to sell his wares there, subject to this observation, we think, that the passage in the judgment in Hellawell *v.* Eastwood does state the true principles, though it may be questioned if they were in that case correctly applied to the facts. The Court, in their judgment, determine what they have just declared to be a question of fact thus: "The object and purpose of the connection was not to improve the inheritance, but merely to render the machines steadier, and more capable of convenient use as chattels."

In 1853 the Court of Queen's Bench had, in Wiltshear *v.* Cotterill, 22 L. J., Q. B., 177, to consider what articles passed by the conveyance in fee of a farm. Among the articles in dispute was a thrashing-machine, which is described in the report thus: "The thrashing-machine was placed inside one of the barns (the machinery for the horse being on the outside), and there fixed by screws and bolts to four posts, which were let into the earth." Hellawell *v.* Eastwood was cited in the argument. The Court, however, without noticing that case, decided that the thrashing-machine being so annexed to the land passed by the conveyance. And in Mather *v.* Fraser, 25 L. J., Ch., 361, Wood, V. C., who was then judge both of the fact and the law, came to the conclusion that machinery affixed not more firmly than the articles in question by the owner of the fee to the land, for the purpose of carrying on a trade there, became part of the land. (This was decided in 1856.)

As to the steam-engine and boiler, they were necessary for the use of the baths (Walmsley *v.* Milne, decided in 1859, 29 L. J., C. P., 97). The hay-cutter was fixed into a building adjoining the stable as an important adjunct to it, and to improve its usefulness as a stable. The malt mill, &c., were also permanent erections. They, therefore, resemble in no particular, except being fixed to the buildings by screws, the mules put up by the tenant in Hellawell *v.* Eastwood.

If, therefore, the matter were to be decided on principle, without reference to what has since been done on the faith of the decisions, we should be much inclined to hold that the looms now in question were, as a matter of fact, part of the land. But there is another view of the matter which weighs strongly with us; Hellawell *v.* Eastwood was a decision between landlord and tenant, not so likely to influence those who advance money on mortgage as Mather *v.* Fraser, which was a decision directly between mortgagor and mortgagee. We find that Mather *v.* Fraser, decided in 1856, has been acted upon in Boyd *v.* Shorrock; Law Reports, 5 Exq. 72; by the Court of Queen's Bench in Longbottom *v.* Berry, Law Reports, 5, 2 B; and in Ireland *v.* Dawson, Law Reports, 2 Exq. 222. These cases are too recent to have been themselves much acted upon, but they show that Mather *v.* Fraser has been generally adopted as the ruling case.

It is of great importance that the law as to what is the security of a mortgagee should be settled, and without going so far as to say that a decision, only sixteen years old, should be upheld right or wrong on the principle that *communis error facit jics*, we feel that it should not be reversed, unless we clearly see that it is wrong. As already said, we are rather inclined to think that if it were us, *integra*, we should find the same way. We think, therefore, that the judgment should be affirmed.

Judgment affirmed.

THE FIXTURES OF A PUBLIC-HOUSE HELD BY THE HOUSE OF LORDS TO PASS WITH THE REALTY UNDER A MORTGAGE OF THE PROPERTY.

From the *Justice of the Peace*, May 22nd, 1875.
House of Lords, March 2.

MEUX *v.* JACOBS.

Landlord and tenant—Mortgage—Public-house fixtures—Bill of sale—Registration.

Though fixtures are deemed personal chattels for the purpose of the Bills of Sale Act, they are not chattels for all purposes. Hence, where a tenant of a public-house mortgaged his lease and fixtures, these were held to pass to the mortgagee, though placed there after the date of the mortgage, and a bill of sale after the date of the mortgage did not affect the property in the fixtures.

This was an appeal from a decree of the Master of the Rolls.

The appellants were brewers, who were mortgagees of a public-house, and the bill was filed to restrain the respondent from selling or removing the trade fixtures or fittings in or about the house. One Allen, being entitled to the house, and to certain fixtures or fittings upon the premises, for the residue of a term, applied to the appellants for an advance of £800, which was made to him on the security of the said house, upon the terms of the deed poll of 11th August, 1869, whereby he agreed to execute a legal mortgage when required, and the lease was at the same time deposited with the appellants. By an indenture of 7th December, 1873, Allen mortgaged by way of demise the premises comprised in the lease to the appellants for the residue of the term. Neither the equitable deposit nor the mortgage were registered under the Bills of Sale Act. Allen subsequently executed a bill of sale to the respondent of the fixtures and fittings of the house, some of which had been placed there before the date of the deed poll, and some subsequently, and the appellants filed their bill, alleging that such fixtures formed part of their security, and praying for an injunction to restrain the respondent from removing them.

In the Court below it was erroneously assumed on both sides that the bill of sale to the respondent was registered, but it appears that this was not so.

The Master of the Rolls held that the case was governed by ex-parte Daglish, L. R., 8 Ch. 1072, and dismissed the bill with costs. From this decree the present appeal was brought.

Fisher, Q. C., and Freeling, for the appellants, were stopped.

E. Ward, for the respondent, contended that the fixtures were not so annexed to the land as to pass to the mortgagee, and they were chattel interests within the meaning of the Bills of Sale Act, 17 & 18 Vict. c. 36. Richard *v.* James, L. R., 2 Q. B. 285; Mather *v.* Frazer, 2 K. & J. 536; Holland *v.* Hodgson, L. R., 7 C. P. 328; Hawtrey *v.* Butlin, L. R. 8 Q. B. 290; Boyd *v.* Shorrock, L. R., 5 Eq. 72; Clunie *v.* Wood, L. R. 4 Ex. 328.

Lord Chelmsford.—My Lords, when I read the judgment of the Master of the Rolls, I certainly expected that the question which was to be determined by your lordships was one of a very different description from that which has been presented. I thought that the Master of the Rolls had decided the case upon these grounds—that the deposit of the lease to Meux & Co., included the fixtures; that it was a bill of sale within the Bills of Sale Act; that it required registration, and that, not having been registered, it was, therefore, not available against the claims of Mr. Jacobs, who had a bill of sale which was duly registered. But now it appears that the whole case was a mistake, that his Honour was not made acquainted with the real facts upon which the question was to be determined arising out of the circumstances of the case, and that we are now called upon, on totally different grounds, to form an opinion as to whether the decree should stand. *It has been argued before your lordships, that the Bills of Sale Act having made fixtures personal chattels, these are now personal chattels for all purposes, and that, consequently being so made, they did not pass under the deposit which was made to Meux & Company.* But the Bills of Sale Act applies only to certain cases; it provides that where a bill of sale is made it must be registered, "otherwise such bill of sale shall, as against all assignees of the estates and effects of the person whose goods, or any of them, are comprised in such bill of sale, under the laws relating to bankruptcy or insolvency, or under any assignment for the benefit of the creditors of such person, and as against all sheriffs' officers, be null and void." Fixtures under the interpretation clause are to be personal chattels, but personal in these particular cases only. *It would be a most extraordinary conclusion for your lordships to arrive at, that because, for a particular purpose, and to prevent frauds upon creditors, it is provided in the interpretation clauses of an Act of Parliament that fixtures are to be deemed personal chattels to all intents and purposes, and that also*

as between a mortgagor and mortgagee they are personal chattels, although certainly not within the terms of the Act. Now, it is admitted that unless the Act has this extensive application, the deposit of the lease carried with it the fixtures, and therefore, there is really nothing whatever to argue in this case. *The case is perfectly clear, and upon totally different grounds from those on which his Honour, the Master of the Rolls, decided it, we must come to the conclusion that his decree must be reversed.*

Lord Hatherley concurred.

Lord Selborne.—*My Lords, it is very clear, I think, that the Master of the Rolls would never have made the decree now under appeal but for a mistake as to a material fact, for which, as I understand from what has passed at the bar of your lordships' house,* his Honour is not so much responsible as those who conducted the argument before him, who failed to make his Honour aware of the precise condition of the facts on the most material point, that is, as to the absence of registration in favour of either of the two competing titles. *It has been, however, attempted to maintain the judgment upon the suggestion of a distinction between the effect as to fixtures of a mortgage in fee simple by a freeholder and a mortgage by way of assignmont of a term by a leaseholder. It is admitted that for that distinction no authority can be cited, independent of certain dicta which occur only in cases which arose under the Act with reference to the registration of bills of sale, aud that numerous authorities, before the passing of that Act, had determined the effect of a mortgage, legal or equitable, by a term as to fixtures upon demised land, to be precisely the same in favour of the mortgagee as if he had been a freeholder and the mortgage a mortgage in fee. Another subsidiary point is really covered by the same decisions, namely, the suggestion that although fixtures which were upon the land at the date of the mortgage might pass, those which were placed upon it after the date of the mortgage, would be in a different situation. As to that, it is admitted that at all events in cases of mortgages in fee, trade fixtures placed upon the land after the mortgage, are so annexed to the land as to belong to the mortgagee.* And if your lordships do not recognise the primary distinction relied upon between the effect of a mortgage in fee, and the effect of a mortgage by way of assignment of a term for any other purpose, I apprehend you cannot recognise it for that purpose even if there be no authorities precisely in point as to the effect of a mortgage of a lease so far as relates to fixtures afterwards placed upon the

land. My impression, not having heard any argument upon that point from the appellant, is, that had it been necessary, authorities upon that point precisely to the purpose might have been produced. But the principle must be the same, and both those arguments, therefore, fail unless that distinction can be made good, which was attempted to be founded on the Registration Act. I own it was with some degree of surprise that I heard the argument offered, that because the interpretation clause in the Registration Act says and only says that the term "personal chattels," as used in that Act, shall be deemed to include fixtures, therefore, for other purposes than those of the Act the general nature of fixtures with reference to the land to which they were affixed was to be considered altered in law, and that in all dealings with those fixtures, whether inside or outside of the provisions of that particular Act of Parliament, the altered sense was to prevail. Even for that purpose of the Act of Parliament it appears to me that the interpretation clause does no more than say that where you find in the Act these words "personal chattels," they shall, unless there be something repugnant in the contex or in the sense, include fixtures. What operation upon fixtures so covered by the expression, personal chattels, the Act may have, must depend upon its particular provisions, and that interpretation clause can have no influence whatever upon the present question, nor can anything else in that statute, if it be true, as is admitted at the bar, that this is not a case legislated for in any other way by the statute. It is very frankly admitted that in the case of Richards *v.* James, L. R. 2 Q. B. 285, decided in the year 1867, a decision which your lordships are not in any way called upon to review or express an opinion upon, as to the effect of the Registration Act, was given, when it was expressly laid down that apart from the events of bankruptcy or execution, the Bills of Sale Act would have no operation whatever as against an unregistered assignment of fixtures. The circumstances of that case were these. There were two persons who had assignments of certain trade fixtures of a person who afterwards had an execution issued against his goods. The first assignee, Spark, had not registered his assignment; the second, Hollingsworth, had; the fixtures were taken in execution and recovered by Hollingsworth, the registered assignee, second in order of time from the execution creditor. The Court of Queen's Bench held that as the first assignee could not have set up any title against the execution creditor, the title of Hollingsworth, which had prevailed by reason of registry against the execution creditor, was not to give

way to the title of Spark; in other words, that Hollingsworth could retain against Spark what he had recovered, and what Spark could not have recovered from the execution creditor; and what the Court said as to the position in which things would have stood, had there been no execution, was this:—"Had it not been for Hollingsworth's subsequent registered bill of sale, the execution creditors would have been entitled to the proceeds of the goods seized. It is equally clear, on the other hand, that had there been no execution, and had the question been merely which of the two claimants was entitled to priority against the other, Sparks' claim would have prevailed, because there is nothing in the Act which makes it necessary to register a bill of sale as against the holder of a subsequent bill of sale, whether the latter be registered or not." According to my recollection, which is imperfect, and possibly may be erroneous, in Beglie *v.* Fenwick, 24 L. T. Rep. N. S. 58, also the mortgagor had become bankrupt before the question arose; and there being in that case a competition between a prior unregistered assignee and a subsequent registered assignee, if I am right in thinking that the additional fact occurred of bankruptcy by the mortgagor, the case might be brought within the reach of the same principle with Richards *v.* James. And in the case of Daglish before the Lords' Justices, there had undoubtedly been a bankruptcy. Whether those cases were correctly decided or not is not the question before your lordships. It may be an important question, and for my own part I think your lordships would desire to abstain, on this occasion, from expressing any opinion upon the subject, it not being necessary to do so. *But in this case, when the facts are understood, there really appears to be no possible ground upon which the claim of the plaintiff could be resisted.* I apprehend that the form of your lordships' judgment will probably be this, and I submit it accordingly, to your lordships. Reverse the decree of the Master of the Rolls, and declare that the plaintiff is entitled to a decree for perpetual injunction, according to the prayer of the bill, together with the costs of the suit, and with that declaration remit the cause to the Court below.

Decree reversed.

If the principles laid down in Holland *v.* Hodgson, and Meux *v.* Jacobs, are applicable to rating property, then the Halstead case is no authority, and the decisions in all the previous cases remain unaffected by it. And the last case (Laing & others) before the Court on rating machinery, the Court held machinery to be rateable. The following is a full report of this case.

In the High Court of Justice, Queen's Bench Division.

IN THE MATTER OF AN APPEAL,

WHEREIN

JAMES LAING - - - - - *is Appellant,*

AND

THE OVERSEERS OF THE POOR OF THE TOWNSHIP OF BISHOPWEARMOUTH AND THE ASSESSMENT COMMITTEE OF THE SUNDERLAND POOR LAW UNION, - - *are Respondents.*

CASE.

Case stated by consent, and by order of Mr. Justice for the opinion of the Queen's Bench Division, under the statute 12 & 13 Vict., c. 45, sec. 11.

A rate for the relief of the poor of the township of Bishopwearmouth, in the county of Durham, and for other purposes chargeable thereon, according to law, was duly made by the overseers of the poor of the said township on the 15th day of May, 1875, after the rate of 12*d.* in the pound, and was duly allowed and published according to law.

A copy of the rate, so far as the appellant is affected, is as follows :—

No.	Occupier.	Owner.	Description of Property rated.	Name and situation of property.	Gross estimated rental.	Rateable value.	Rate at 12*d.* in the pound.
2160	James Laing	James Laing	Workshops, warehouse, and office..	Southwick	£315.	£272.	£13 12*s.*
2162	James Laing	James Laing	Ship-building yard, graving dock, quay, workshops, warehouse, machinery, land, cranes, and other plant	ditto	£767.	£663.	£33 3*s.*
2163	James Laing	James Laing	Ship-building yard, workshop, and drafting loft, offices, stables, cottage, land, machinery, plant, &c.	ditto	£758.	£675.	£33 15*s.*
2164	James Laing	James Laing	Tenements gallery.....	ditto	£24.	£20.	£1.

The appellant duly gave notice of appeal against the said rate, and it has been agreed between the parties that the matters in dispute between them shall be settled by a special case stated to this honourable Court, as before shewn.

1. The appellant is the owner and occupier of extensive "premises" for building, fitting out, and repairing iron and wooden ships and vessels, situate on the river Wear, in the township of Bishopwearmouth, and for manufacturing and repairing machinery for such ships.

2. The premises comprise several acres of land, upon which are constructed the necessary slipways for building and launching iron and wooden ships, a large graving dock for repairing iron and wooden ships, and large and extensive workshops, warehouses, and other erections necessary to carry on the above trades.

In and upon such premises are certain valuable machinery and plant used for the purpose of the business.

3. No question arises as to the rating of a part of the premises rated, viz., the workshop, warehouse, and office (2160), nor of the ship-building yard, graving dock, quay, workshop, warehouses, land (part of No. 2162), nor of the ship-building yard, workshop, drafting office, stables, cottage, and lands (part of No. 2163), nor of the tenements gallery (No. 2164).

4. The question is whether the whole of the "machinery and plant," or any portion of such machinery and plant which is hereinafter described in detail, and numbered in classes 1 to 13 is rateable, or is to be taken into consideration in ascertainining the rateable value of "the premises."

5. The machinery and plant in question is divided into thirteen classes, mentioned in the Appendix, but each of these classes is subdivided so as to show the nature of the several machines, the purposes for which they are used, and further in those cases in which the machines are attached to the freehold, the mode in which they are so attached, and in those cases in which the machines are not attached to the freehold, the mode in which they are fastened so as to be available for the purposes for which they are used.

6. For the purpose of illustrating the nature of the questions which arise, the description of certain of the principal pieces of machinery has been extracted from the Schedule contained in the Appendix, and is contained in the following paragraphs.

BOILERS.

7. There is a boiler, 33 feet long by 4 feet 6 inches in diameter, which is set in ashler masonry (lined with fire-brick) partially sunk in the ground. The steam pipe from this boiler is carried overhead to an engine, and also to another engine, which is attached to a plate bending machine. There is a second boiler set in the same manner. Some of the pipes from these boilers are carried overhead to one engine, and others underground to another engine. They have also flues attached to them. There is a third boiler, which stands on a cast-iron plate, which plate is sunk into the ground, but the boiler is not fixed in any way to the plate. The steam pipes connected with this boiler are carried underground.

ENGINES.

8. There is a horizontal high-pressure engine, weighing about six tons. The cylinders, motion bars, and some other parts of it are mounted upon a cast-iron bed plate. This plate is bolted to a stone foundation, which is partially sunk in the ground. The engine drives all the machinery on the east side of the high yard and in the joiners' shop.

A vertical high pressure compound steam-engine, weighing about 10 tons. The cylinder and some other parts are mounted upon a heavy cast-iron pillar, which is bolted at the base to a large bed stone sunk in the ground, and at the side to the main wall of the building, and is fixed by bolts. This engine is provided with condenser, and with air and circulating pumps, which are fixed to a concrete foundation sunk into the ground, and are driven from a belt from the main shaft through a counter shaft. This engine drives all the machinery in the low yard, excepting those described as having their own engines attached.

A pair of double cylinder vertical engines, bolted to one of the cast-iron columns which support the roof, and unattached to any foundation. A portable engine, with boiler mounted on cast-iron wheels, so that it can be moved from place to place.

SHAFTING.

9. The main shafting is about 220 feet long, and is coupled direct to the crank shaft of the engine (No. 14 in Schedule); it is supported on bearings carried upon brackets, bolted to the main wall of the building.

There is also a main shaft, 210 feet long, carried upon bearings borne by and attached to the principals of the roof.

And another main shaft, 237 feet long, carried on bearings borne by brackets, bolted to the cast-iron columns carrying the roof.

There are other lines of shafting in connection with the main shafts, carried by bearings borne by brackets bolted to the girders.

PUNCHING AND SHEARING MACHINES.

10. Three punching and shearing machines, driven by their own engines, which are bolted to the main frames. The machines, which weigh 14, 12, and 17 tons respectively, have cast-iron frames and gearing. The two first stand upon wooden sleepers, the last upon a concrete foundation; both the sleepers and the said foundation being partially sunk into the ground. The first and third of the machines are attached by bolts to the sleepers and the foundation respectively.

PLANEING, BOREING, AND SLOTTING MACHINE.

11. Planeing, boreing, and slotting machine, weighing 58½ tons, driven by its own engine. It is bolted to a cast-iron foundation plate. This foundation plate rests on a concrete bed sunk into the ground, but it is not fixed thereto by any fastenings.

RIVETTING MACHINE.

12. A rivetting machine, weighing without boiler 18¾ tons, consisting of cast-iron frames and holder-up; the whole is bolted down to a concrete or brick foundation.

PUNCHING AND SHEARING MACHINES.

13. Three punching and shearing machines. The first and second of which weighing 14 and 10 tons respectively, stand on wooden sleepers, partially sunk in the ground. The first is but the second is not fixed thereto, the third stands upon and is bolted to a wooden frame, built into brick-work, forming a kind of pit, the machine itself being partially sunk into the ground. It is driven by a cross shaft from the counter shaft.

LATHES.

14. Four lathes; the first weighing 34 tons, attached to a heavy cast-iron foundation plate, but having a movable head-stock for the purpose of widening or narrowing the gap. The foundation plate is bolted to a concrete foundation, the second is bolted to stone blocks, partially sunk in the ground, the third is partially imbedded in concrete, and the fourth rests on blocks of stone, partially sunk in the ground, but is not attached thereto.

DRILLING MACHINES.

15. Three drilling machines; the first is bolted to a stone block, sunk into the floor, the second to a cast-iron column of the roof, the third to the cast-iron bed of one of the lathes.

SAW BENCHES.

16. A saw bench and band saw; the first is mounted upon a wooden frame, partially sunk into the ground, the second is fixed to the wooden floor of the shop.

STEAM-HAMMER, SHEAR LEGS, AND CRANES.

17. The steam-hammer is bolted to wooden foundation, sunk in the ground.

18. The shear legs, which with their engines weigh 40 tons, and are constructed to lift 80 tons, are bolted to a stone foundation in the quay wall, the back leg is traversed by a screw carried in a cast-iron frame, which is bolted to a concrete foundation sunk in the ground.

19. The cranes; the first and third are bolted to the wooden quay, and have cast-iron frame gearing and main post fixed in a cast-iron bed-plate; the second has cast-iron frames, fixed in a cast-iron sole-plate, which is bolted to a wooden frame, and with others moves on a line of rails. The remaining cranes are bolted to stone blocks to the cast-iron columns of the roof, or to the main wall of the building, or to wooden main posts sunk in the ground. There is also a traversing crane, weighing 30 tons, carried on a pair of wrought-iron girders, bolted to the iron columns supporting the roof.

PUMPS.

20. Graving dock pumps for keeping graving dock free from water, fixed to cast-iron box, set in a wood frame, sunk in the ground, and driven by belt from counter shaft. Two donkey pumps, mounted on cast-iron bed-plates, bolted to stone blocks, partially sunk in the ground.

WEIGHING MACHINES.

21. Two weighing machines; the first fixed in masonry, sunk in the ground, with brick house attached; the second is mounted on wheels.

SMITHS' SHOP.

22. A smiths' shop, containing 12 fire-places, with brick hearths, partially sunk in the ground, and three furnaces, constructed of brick work, also partially sunk in the ground, and tied with iron tie-rods and cast-iron plates.

WATER TANKS.

23. Four water tanks; the first of cast-iron, fixed on wooden pillars, partially sunk in the ground; the second of wood, placed on blocks of wood, laid on the surface of the ground. Two others of wrought-iron, stayed to the main wall of the engine building shop; these stand respectively on concrete and brick foundations, and are 35 feet and 50 feet in height, and 4 feet 6 inches and 5 feet in diameter.

GRINDSTONE.

24. A grindstone, fixed to cast-iron columns of the roof by flat wrought-iron stays bolted to the columns.

RAILWAY.

25. A railway of 230 yards in length, laid with cast-iron chairs on wooden sleepers, ballasted in the usual way.

26. In the above description where machines are spoken of as being bolted to the foundations, or to the walls, roof, columns, or pillars of the buildings, such machinery could not be taken to pieces and removed without the nuts of such bolts being unscrewed, or such bolts being extracted; but except removing the bolts the whole of the machinery could be removed without any disturbance or injury to the freehold, and when removed might be used in, and are suitable to be used in any other similar mill or manufactory.

27. It is to be understood throughout the above descriptions that, except when fastenings and connections are stated, all the machines are retained in their places by their own weight merely. That before being connected as described each of them, except the railway mentioned in paragraph 25, is a separate and complete article in itself, known in the trade as such.

28. In the cases in which the machines are stated rest upon or be bolted to stone, brick, wood, or concrete foundations, such foundations were specially constructed for the purpose of receiving the said machines.

29. The whole of the buildings, foundations, engines, shafting, and other machinery included in the Appendix, and hereinbefore referred to, were intended to be permanently used in the ship-building and repairing yard, the subject of the assessment, and are now used by the appellant for the purpose of building and repairing ships and vessels, and for manufacturing and repairing machinery on such ships and vessels, and are intended to be permanently used for such purposes.

30. The question for the opinion of the Court is whether the machinery and plant hereinbefore mentioned and described in the said Appendix, or any and what part thereof are to be taken into consideration as in any way enhancing the rateable value of the hereditaments included in the aforesaid assessment, and if any parts are to be taken into consideration as enhancing the rateable value, upon what principle are they to be valued, rated, or taken into consideration.

The Court is to have power to draw any inference of fact.

The amount of the rateable value is to be ascertained by the parties upon the principles laid down by the Court.

APPELLANT'S POINTS.

On the argument of this appeal the appellant will rely on the following points.

1. The different items of plant and machinery mentioned in the case are chattels, and not fixtures, and ought not to be taken into consideration as enhancing the rateable value of the hereditaments.

2. That those items which are retained in their place by their weight merely, cannot be treated as a part of the freehold, and that it makes no difference that they rest on foundations specially prepared for them.

3. That these items which are connected with the buildings are connected in such ways that they can be removed without any injury to the freehold.

4. That such items cannot be considered as fixtures, and that the connection with the building is for the purpose of steadying them and not for the permanent improvement of the inheritance.

5. That each of the said items (except the railways), is a separate and complete article, and is quite independent of the buildings where it is placed.

6. That the Court having power to draw inferences of fact, ought if necessary to hold that the different items connected with the buildings are so connected for the purpose of steadying them, and because they are not of sufficient weight themselves.

RESPONDENTS' POINTS.

The following are the points intended to be urged on the part of the respondents, on the argument of the special case herein.

1. That, on the facts stated in the special case, the whole of the machinery mentioned in the special case and appendices is rateable.

2. That the said machinery is to be taken into consideration as enhancing the rateable value of the premises, the subject of the rate.

3. That as long as the machinery remains in motion, and is occupied and used with the premises, they must be taken into consideration as enhancing the rateable value.

4. That the premises being specially adapted and designed for and fitted with the machinery and fittings, the premises and machinery as now occupied, must be treated as being the rateable hereditament.

5. That the machinery being attached to the freehold and placed upon foundations specially prepared for it, the physical possibility of removal does not prevent the machinery from being rateable.

6. That the findings in paragraph 29 of the case shew that as now occupied the machinery therein referred to must be taken into consideration as enhancing the rateable value.

7. That the principle upon which the machinery is to be assessed is by calculating the amount of rent which a tenant would give for the premises, that is to say, the land, buildings, foundations, engines, shafting and other machinery, included in the Appendix as tenant from year to year. The tenant taking upon himself the rates and taxes, costs of repairs and insurance, and an annual sum sufficient to keep the said buildings, foundations, engines, shafting and machinery in a state to command the rent.

THE ARGUMENTS.

From the shorthand notes of Messrs. Chever, Bennett & Dixon.

Westminster Hall,
November 21st, 1877.

In the High Court of Justice.
Court of Appeal from Inferior Courts.

LAING *v.* THE OVERSEERS OF BISHOPWEARMOUTH AND SUNDERLAND UNION.

Before Lord Chief Justice Cockburn, Mr. Justice Mellor, and Mr. Justice Lush.

Mr. Edwards.—I am for the appellants, and my learned friends Mr. Herschell and Mr. Webster are on the other side. This is a case stated under Baines' Act, 12 and 13 Vict., and the question all or any and which of the subject matters mentioned in the schedule are rateable or no. The case is very short, and I will read it first. It sets out the copy of the rate, and the part of the rate which is important is, that No. 2,163; owner, James Laing; occupier, James Laing; description of property rated, ship-building yard, workshop and drafting loft, offices, stables, cottage, land, machinery, plant, &c.; name and situation of property, Southwick; gross estimated rental, £758; rateable value, £675; rate at 12*d.* in the pound, £33 15*s.* No. 2,164; occupier, James Laing; owner, James Laing; description of property rated, tenements, gallery, name, and situation of property, Southwick; gross estimated rental, £24; rateable value, £20; rate at 12*d.* in the pound, £1. The appellant duly gave notice of appeal against the said rate, and it has been agreed between the parties that the matters in dispute between them shall be settled by a special case stated to this honorable Court as before shown. The appellant is the owner and occupier of extensive premises for building, fitting out and repairing iron and wooden ships and vessels, situate in the River Wear, in the township of Bishopwearmouth, and for manufacturing and repairing machinery for such ships and vessels. The premises comprise several acres of land upon which are constructed the necessary shipways for building and launching iron and wooden ships. A large graving-dock for repairing iron and wooden ships, and large and extensive workshops, warehouses, and other erections necessary to carry on the above trade. In and upon such

premises are certain valuable machinery and plant used for the purpose of the business. No question arises as to the rating of a part of the premises rated, namely, the workshops, warehouse, and office (No. 2,160), nor of the ship-building yard, graving-dock, quay, workshops, warehouses, land (part of No. 2,162), nor of the ship-building yard, workshop, drafting-office, stables, cottage, and land (part of No. 2,163), nor of the tenements, gallery (No. 2,164.) The question is, whether the whole of the machinery and plant, or any portion of such machinery and plant, which is hereinafter described in detail, and numbered in classes 1 to 13, is rateable, or is to be taken into consideration in ascertaining the rateable value of the premises. The machinery and plant in question is divided into thirteen classes mentioned in the Appendix, but each of these classes is subdivided so as to show the nature of the several machines, the purposes for which they are used.

Mr. Justice Mellor.—It seems to raise a very small question.

Mr. Edwards.—I think we shall be able to argue upon some of the law. There is a long Appendix giving a full description of the various classes that is epitomised in the case. Then the question for the opinion of the Court is this: "The question for the opinion of the Court is whether the machinery and plant, hereinbefore mentioned and described in the said Appendix, or any and what parts thereof, are to be taken into consideration as in any way enhancing the rateable value of the hereditaments included in the aforesaid assessment, and if any parts are to be taken into consideration as enhancing the rateable value upon what principle are they to be rated or valued, or taken into consideration."

Well, my Lords, the question really is this, which of these articles are what may be called chattels, so as not to be rateable to the poor rate, and whether any of them, or all of them, are so attached to the freehold, as to be the subject of rating in this way, that they are to be taken into consideration as enhancing the value of the property.

The Lord Chief Justice.—It strikes me very forcibly that is a question of fact not of law.

Mr. Edwards.—Some recent cases have somewhat unsettled what was supposed to be the law, and in the case of the Queen *v.* Lee, the opinion given there has to some extent modified or altered the views hitherto entertained. It is in the Law Reports, 1st Queen's Bench, page 241. That was a case of rating gas works, but there

is another case which I will mention, and which was a more recent one, and which was thought to some extent to be in conflict with the preceding one, that is the Queen *v.* The Overseers of Halstead. That is only reported as far as I can make out in the *Justice of the Peace*, for June the 15th, 1867. It is a very short report there, but in a recent book published by Mr. Balfour Browne, on Rating, it is given more fully.

The Lord Chief Justice.—Did it not get into any of the reports?

Mr. Edwards.—I have not been able to find it.

Mr. Justice Mellor.—Where is it reported?

Mr. Edwards.—In the *Justice of the Peace*, for June 15th, 1867. I do not know what number it would be called. I have got, however, what appears to be a much fuller report. I do not know where my learned friend got it from, but he reports it, and your Lordship's judgments at greater length than it is reported there, which is simply a short paragraph. The question raised there was with respect to the machines of a silk mill, which were affixed to the soil for the purpose of steadying them, and for the purpose of being used in the trade, but there the Court held they were not rateable.

The Lord Chief Justice.—What are you citing from now?

Mr. Edwards.—Your Lordship has before you a very short report, in a book recently published by Mr. Balfour Browne, on the Law of Rating, at page 383, he quotes that case. My learned friend, Mr. Browne, seems to have got hold probably from the parties of a copy of your Lordship's judgment, and it is given at greater length than it is before you there.

Now, in that case, a rate had been laid on "factory buildings, which were used for the manufacture of silk and crape, which contained valuable and bulky machinery, and the question for the Court was, whether the machinery was to be included in fixing the rateable value." Many of the machines, "which I will point out in this case," were fixed to the floor or walls, for the sole purpose of steadying them. It appeared, as in the last case, that these machines were commonly bought and sold and renewed as chattels.

The Lord Chief Justice.—They were not permanently fixed to the freehold, but simply for the purpose of steadying them.

Mr. Edwards.—Yes, my Lord, they were fixed with screws, for the purpose of keeping them in their places, but not built into the freehold so as to form part of it. I will candidly say a part is doubtful,

but I think the greater part of the machinery in the case before your Lordship would come within the principle of the Queen *v.* Halstead, of which I will read a passage or two of what your Lordship said, "These machines are chattels, and are not in any way attached to the freehold; they are fastened to it, it is true, but not affixed to it so as to make them part of the freehold. It was so decided in Hellawell *v.* Eastwood, on most satisfactory grounds. There the machinery in question consisted of mules used for spinning cotton, fixed by means of screws, some into the wooden floor of the mill, some into the lead which had been poured in a molten state into the holes in stones. Now, Mr. Baron Parke, in delivering the judgment of the Court says, 'In considering this case we cannot doubt that the machines never became part of the freehold. They were attached slightly so as to be capable of removal without the least injury to the fabric of the building, or to themselves; and the object and purpose of the annexation was not to improve the inheritance, but merely to render the machines steadier and more capable of convenient use as chattels, which is exactly similar to this present case; they were never a part of the freehold any more than a carpet would be which is attached to the floor by nails, for the purpose of keeping it stretched out,' and so forth; then your Lordship says, "I consider that the recent cases have established this, that if you have things that are only so annexed to the freehold as that they still retain their character of chattels, and do not become so affixed to the freehold as to become part and parcel of it, you may in assessing the rateable value of the building take them into account, provided always that they have been attached to the building, with the intention the attachment should be a permanent one, and under such circumstances as that upon a demise of the building that the chattels in question would pass with it;" and your Lordship says, "Such was the case of the gas works, such was the case of a certain portion of the articles referred to in the case of Regina *v.* The North Staffordshire Railway Company. In both these cases the chattels had been so permanently connected with the building as that they would pass under the demise of the buildings; and if that were the case here, I should agree that though chattels they would be, so far part of the building as that they should be taken into account as assessing the rateable value of the building, but the finding of the Sessions appears to me to be directly to the contrary, they have not been permanently attached to the building.

They have been simply attached to the building for the purpose of steadying the machines for the better and more convenient use of those machines; that seems to me to make all the difference."

The Lord Chief Justice.—Do I understand you to say that differs at all from the view taken by the Court in the prior case of the Queen *v.* Lee.

Mr. Edwards.—I think not, my Lord, but there seems to have been some notion of that.

The Lord Chief Justice.—At all events, as at present advised, I should be prepared to abide with the concurrence of the rest of the Court with what was said in the Queen *v.* Lee.

Mr. Edwards.—I will read what Mr. Browne says. It will touch the point your Lordship is mentioning. "It is evident," says Mr. Browne, "from what was said in that case, that the Judges to whose opinions we have referred, did not consider their decision as at all conflicting with or overruling the earlier cases on the subject. Indeed, they expressly referred to the case of Regina *v.* The parish of Lee, as their authority in the case, which was then before them. There the decision was in effect that if the things were so fastened to the premises as to be still chattels, and would not be part of the premises at all. Here the decision was that the object of annexation was to be had regard to; and if the object was not to improve the inheritance, if it was not intended that the attachment should be permanent, but had been made with a view to the more convenient use of the machines, they were still to be regarded as movable chattels, and therefore were not rateable."

The Lord Chief Justice.—I should be prepared to put the word "effect" rather than "object." It is not what the party proposes, it is what he does. If the effect of the attachment is to make it permanent, you must take that to have been the intention of the parties as well as the effect of what they have done. One would have that, after that exposition of the law with which the Court is quite familiar, that the Justices in question would have had no difficulty in applying it, because, after all, when the law is so stated, it becomes a question of fact, are these things fastened to the freehold permanently attached. If they are only fastened to the freehold for the purpose of steadying them, and for a temporary purpose, then, according to this decision, they do not become part of the freehold.

Mr. Edwards.—And are not to be rated or taken into account as

enhancing the value of the freehold. There is a more recent case in this Court than the Queen *v.* Halstead, which I find in the Law Times, 32nd volume, page 486. That is a case of Chidley *v.* The Churchwardens of West Ham.

Mr. Justice Mellor.—I suppose that in reality that probably one or two later cases have not been reported, because they considered our opinion was conclusive upon the subject.

Mr. Edwards.—I rather incline to that view, my Lord.

The Lord Chief Justice.—You are for the appellants.

Mr. Edwards.—Yes, my Lord.

The Lord Chief Justice.—I wish you to be good enough to consider what you are calling upon us to do. The law has been quite recently fully laid down in the Halstead case. The Justices with that exposition of the law before them have to determine the question of fact, are these things which are the subject matter in dispute attached to the freehold, so as actually to form part of the freehold in deference to the principle there laid down, or are they merely so affixed to the freehold as to be used for temporary purposes, or for the purpose of steadying them.

Mr. Justice Mellor.—It is true this is a case stated between the parties, but the parties cannot state cases in this way, which ought to go to the proper tribunal—to the Sessions.

Mr. Herschell.—The finding here is that they were intended to be permanently used on the premises in connection with the business which is carried on, that I find in the 13th paragraph of the case.

The Lord Chief Justice.—They have found they were permanent?

Mr. Herschell.—Yes, my Lord. "The whole of the foundations, buildings, engines, shafting, and other machinery included in the Appendix, and hereinbefore referred to, were intended to be permanently used in the ship-building and repairing yard, the subject of the assessment, and are now used by the appellant for the purpose of building and repairing ships and vessels, and for manufacturing and repairing machinery for such ships and vessels, and are intended to be permanently used for such purposes."

The Lord Chief Justice.—They were intended to be used?

Mr. Herschell.—Yes, my Lord.

The Lord Chief Justice.—Are they used?

Mr. Herschell.—Yes, my Lord, and are being used by the appellant.

The Lord Chief Justice.—This is a case stated under Baines' Act.

Mr. Edwards.—Yes, my Lord.

The Lord Chief Justice.—We will not take upon ourselves to decide a question of fact.

Mr. Herschell.—I am not disposed to ask your Lordships to decide a question of fact. As regards anything that is a mere chattel in no way attached to the soil, I do not think upon the authorities I can contend that, even although it be a weighty chattel, it is assessable; but as regards all the other things which are not mere chattels, but which are, though not strictly speaking fixtures, yet attached to the freehold, and intended to be used in connection with the business, the authorities say they are to be taken into consideration.

Mr. Justice Mellor.—They enhance the value.

Mr. Herschell.—They enhance the value. If my friend is content with that as the law, that is all we contend for, the rest is for the Justices, but they object to the rating of all these, and many of them clearly attach.

Mr. Edwards.—I shall require to read a little more of the case before your Lordships will come to the conclusion of what the ultimate point is.

Mr. Justice Mellor.—I am only struck with this, when you opened it struck me you were opening matter the legal principle of which had been well settled. It was only the quantity of attachment.

Mr. Edwards.—I was going to say the case I am now about to cite seems to me in principle to cover almost the whole of these various items, because it is not merely a chattel that is exempted; but suppose you put a heavy loom, a turning machine, or any heavy machine, if you put those into the soil those are not rateable.

Mr. Justice Mellor.—If they are not mere chattels they are rateable.

Mr. Edwards.—That is my friend's contention.

Mr. Justice Mellor.—You may not think it comes within this same distinction, arising from the mode in which they are attached to the freehold, or whether they are not intended to be permanently attached to the freehold.

Mr. Edwards.—My contention is this, that beyond the construction of that wall, the engine bed and boiler bed, all that may be removed by the tenant at the termination of his lease, such as engines, lathes,

boilers, and so forth, are all not rateable, and must not be taken into consideration in valuing the premises. I think the case of Chidley *v.* The Churchwardens of West Ham, shows that the article fastened to the soil, built and screwed into the soil, for the purpose of being better worked, and which may be removed by the tenant at the end of his lease, are not the subject of assessment as enhancing the value of his premises; that is a decision in 1835. It is in the 32nd Law Times, page 486, and there your Lordships will find a great number of articles, all those mentioned in the Schedule here, which are not what are called mere chattels, but which were attached to steam-engines for the purpose of being worked, and steam pipes, and firmly fixed into the soil. Now, Mr. Justice Blackburn, in delivering judgment, says this: "There is no difficulty as to the rule of law upon the subject, though there is considerable difficulty in applying the rule. Whatever is affixed to the realty, so as to pass as landlord's fixtures, in a demise of the premises, must be taken to be part of the premises for the purpose of ascertaining its rateable value. The question, what kind of fixtures comes under this description, is treated at length in Holland *v.* Hodgson, in the 26th Law Times Reports, New Series, 709, and in the Law Reports, 7 Common Pleas, page 328. In that case it is stated the question must depend mainly on two circumstances as indicating the intention, namely, the degree of annexation and the object of the annexation. When an article in question is no further attached to the land than by its own weight, it is generally to be considered a mere chattel, but even in such a case, if the intention is apparent to make the article part of the land, they do become part of the land."

[Their Lordships consulted.]

I was reading the most recent case upon the subject. Mr. Justice Blackburn goes on to say, "Thus, blocks of stone placed one on the top of another, without any mortar or cement, for the purpose of forming a dry stone wall, would become part of the land, though the same stones if deposited in a builder's yard, and, for convenience sake, stacked one on the top of the other, in the form of a wall, would remain chattels. On the other hand, an article may be firmly fixed to the land, and yet the circumstances may be such as to show that it was never intended to be part of the land, and then it does not become part of the land. The anchor of a large ship must be very firmly fixed in the ground in order to bear the strain of the cable,

and yet no one could suppose that it became part of the land, even though it should chance the shipowner was also the owner of the fee of the spot where the anchor was dropped. An anchor similarly fixed in the soil for the purpose of bearing the strain of a suspension bridge would be part of the land. Perhaps the true rule is that articles, not otherwise attached than by their own weight, are not to be considered as part of the land, unless the circumstances are such as to show they were intended to be part of the land, the circumstances of proving they were so intended lying on those who assert they have ceased to be chattels; and that, on the contrary, an article which is affixed to the land, even slightly, is to be considered as part of the land, unless the circumstances are such as to show that it was intended all along to continue a chattel."

Now, my Lords, with reference to that, the 26th paragraph of our case find this: "In the above descriptions where machines are spoken of as being bolted to the foundations, or to the walls, roof columns or pillars of the buildings, such machinery could not be taken to pieces and removed without the nuts of such screws being unscrewed, or such bolts being extracted; but, except removing the bolts, the whole of the machinery could be removed without any disturbance or injury to the freehold, and when removed might be used in, and are suitable to be used in, any other similar mill or manufactory."

The Lord Chief Justice.—What better exposition of the law can there be?

Mr. Edwards.—I say that includes the greater part (it will certainly exclude some things) in the thirteen classes. In this case I have the photographs here, my Lord.

The Lord Chief Justice.—It is asking a question of fact which it is not part of our province to determine.

Mr. Justice Mellor.—The principle of law is stated very clearly and fully by Mr. Justice Blackburn in that judgment. You have nothing to do but follow it.

Mr. Edwards.—We say they will not follow it—the overseers.

Mr. Justice Mellor.—That is a matter of fact they do not follow it.

Mr. Edwards.—Mr. Justice Lush's judgment includes such articles as pumps fixed into the ground connected with steam piping, and in every way made steady and secure; but what I say is this, if the tenant could take all that is included in his yard, and put it up in some other yard, which he might take from another landlord, all that

he may so take away without injuring the freehold in any way is not the subject of rating, and cannot be taken as enhancing the value of premises any more than gold in a goldsmith's shop, or in an ordinary house. Mr. Justice Blackburn says, "Applying these rules, it appears by the case that all the articles are chattels well known in the trade, and sold separately, both new and second-hand; they are not attached to the premises, except in the sense that the weight of the article keeps it steady, and though one or two are screwed down, and some attached to pipes, which again are attached to steam-engines, or to what are clearly fixtures; this alone will not make them fixtures. I thought at first that the two pumps were annexed to the freehold, but with some hesitation, I now think they are not so, but"—this is the point—"as independent chattels, and though screwed down when used, they can be easily unscrewed and again sold as chattels, and as the rest of the Court clearly hold they are not annexed to the freehold, I agree with them." Now, if your Lordships will look at this case, beginning at the first class, there is a boiler, my Lord, which is described thus: "Boiler 33 feet long," and so forth, "set in ashlar masonry (lined with fire-brick), partially sunk in the ground. The steam pipe from this boiler is carried overhead to an engine, and also to another engine, which is attached to a plate bending machine. There is a second boiler set in the same manner, some of the pipes from these boilers are carried overhead to one engine, and others underground to another engine. They have also flues attached to them. There is a third boiler which stands on a cast-iron plate, which plate is sunk into the ground, but the boiler is not fixed in any way to the plate." Most certainly that second one is not rateable. Then the engines can be removed. Suppose the appellant was to take another shipbuilding yard, he would remove his engines, set them up and work them again. I think the shafting ought to be excepted. Then the "three punching and shearing machines driven by their own engines. The machines which weigh 14, 12, and 17 tons, respectively, have cast-iron frames and gearing. The two first stand upon wooden sleepers, the last upon a concrete foundation, both the sleepers and the said foundation being partially sunk into the ground. The first and third of the machines are attached by bolts to the sleepers, and the foundation respectively." Then there are planing machines, rivetting machines, lathes, drilling machines, steam hammers, shearlegs, and cranes, all of which have been both put

upon the premises, and may be removed; and although they are put there for the purpose of being worked, and being worked steadily, yet they are not according to the last case I have cited rateable, because they are tenant's fixtures, and can be removed as soon as he pleases on the termination of his tenancy. That is the general principle I ask to be applied to all these cases.

Mr. Herschell.—I venture to submit the principle I seek to apply is the one expressed by the case, and the point my friend has taken is not tenable. He is insisting, unless the things are properly called fixtures, they are things not to be removable by the tenant, and they are not to be taken into consideration by the tenant, which is a view which is not to be adopted, but has been decided against in cases to which I will call your Lordship's attention. My friend insist if they are things which the tenant would have a right to remove as between him and the landlord, that they cannot be taken into consideration as enhancing the rateable value. I shall show your Lordship upon the authorities that has nothing to do with it, whether they were fixtures so called which would pass with the freehold, which could or could not be removed, or which could or could not be tendered for.

The Lord Chief Justice.—What do you say is the criterion?

Mr. Herschell.—I say the criterion is this, whether they are things attached in anyway to the premises, and intended to be permanently used there as part of the premises for the business for which they are carried on.

The Lord Chief Justice.—Is not that the real question. If they are not attached, the tenant can remove them. If they have once become part of the freehold he cannot.

Mr. Herschell.—There are many things the tenant can remove as tenant's fixtures, which, nevertheless, may be taken into consideration as enhancing the value, while he has them there, and while he has them for the purpose of remaining there.

Mr. Justice Mellor.—Is not quite the same rule applicable to fixtures of all kinds?

Mr. Herschell.—No; there are many things not properly rateable. As between the landlord and tenant, and as between the mortgagor and mortgagee, there are certain fixtures which you cannot distrain upon, which are to be taken into consideration as enhancing the

rateable value, and the Courts have again and again said that is not the test; and I say they have laid down this, that if it is either a fixture properly so called, or if it is in any way attached to the premises, and intended to remain permanently, when it is for the purpose of the business there carried on, it is to be taken into consideration. I call your Lordship's attention to what was said in the case of the Queen *v.* Lee. It is in the Law Reports, 1st Queen's Bench. Your Lordship's judgment is at page 250. Your Lordship first disposes of one thing that is a mere chattel, then you say that the retorts—this was a case of gas retorts—the works were gas retorts, in which the classes assessed were carbonized purifiers, steam-engines, and other things. Now, your Lordship says, "The retorts, I am satisfied, are so far fixed to the freehold as to be attached and secured to it, and to become part of it, and they must be treated thereof not as removable fixtures, but as fixtures so connected with the freehold as to become parcel of it. With regard to them there is no difficulty; they are rateable as any part of the entire freehold would be. The other items one and all seem to me to fall within the principle of the cases referred to in the argument of Regina *v.* the Southampton Dock Company, and Regina *v.* the North Staffordshire Railway Company. In the latter case the Court, after time taken to consider, laid down this rule, that when things which, though capable of being removed, are yet so far attached as that it is intended that they should remain permanently connected with the railway or other undertaking, or with the premises used with it, and remain permanent appendages to it as essential to its working, those must be taken to be things increasing the rateable value of the land, and in respect of which the company are not entitled to have the deduction made." Your Lordship laid down that as the result of the law in the Southampton Dock case, to which I will call your Lordship's attention in a moment. These things, *ex hypothesi*, your Lordship treated as not fixtures, so called, your Lordship says, if attached to the soil, and intended to be used as part of the business carried on, and essential to the carrying on of the business, then they are to be taken into consideration. It is land occupied by a shipbuilding yard, and all that is attached to that yard, for the purpose of aiding in the shipbuilding, is to be taken into account, many parts of those things could have been removed without touching or affecting the soil at all. Those great gas meters might have been taken away.

The Lord Chief Justice.—There the soil had been converted into a gas manufactory?

Mr. Herschell.—Yes, my Lord.

The Lord Chief Justice.—You could not have carried on the business of a gas manufactory without these things, therefore, they had become part and parcel of the manufactory.

Mr. Herschell.—So here, my Lord.

The Lord Chief Justice.—And would have passed with a grant or conveyance of the soil occupied by the gas manufactory.

Mr. Herschell.—Here this land has been turned into a shipbuilding and ship-repairing yard, and it is found that all these pieces of machinery, whatever they were, were intended to be permanently used, and were used in that business carried on; that is found, as a fact, that they were there intended to be used, and being used, as part of the business carried on in the performance of the repairing and building ships.

The Lord Chief Justice.—What is the nature of them?

Mr. Herschell.—Take this, for example, they say that a water-tank which is a fixture, just so much as a gasometer, is not to be taken into account, and this boiler which is built into the brickwork.

The Lord Chief Justice.—Hand those photographs up to me.

Mr. Herschell.—They are made exhibits. Take those two for example, what they say is if you like to take out the screws and bolts, you might take that boiler out of the wall, and therefore it is a chattel. It has steam piping connecting it with the furnaces, and is all part of the machinery of the yard just as much as the gasometer or the purifier. That boiler is fixed there for the purpose of building and repairing ships.

The Lord Chief Justice.—That looks much more like the thing.

[Holding up a photograph.]

Mr. Herschell.—Yes, my Lord, that is one of the things which they say is not rateable, because you could unscrew the boiler and take it away.

The Lord Chief Justice.—The brickwork is not in dispute.

Mr. Edwards.—No, my Lord. I agree as to the brickwork and all foundations and solid structures, but not to the chattel.

The Lord Chief Justice.—Why is this permanently attached to the freehold a bit more than the kitchen boiler in a house?

Mr. Herschell.—The kitchen boiler in a house would be taken into consideration as enhancing the value of the house. In one of the cases where the room was used as a billiard-room, they held the billiard-table was to be taken into account.

The Lord Chief Justice.—I think that doctrine has been exploded.

Mr. Herschell.—No, my Lord, I do not think it has been overruled, and Mr. Justice Blackburn puts a grate as a thing to be taken into consideration as enhancing the value of the house.

Mr. Justice Mellor.—As long as the house has that boiler in it that house has an enhanced value.

Mr. Herschell.—Yes, my Lord.

The Lord Chief Justice.—If you could take the boiler away.

Mr. Herschell.—Then it does not enhance the value, my Lord.

The Lord Chief Justice.—It is one thing to say that a gas manufactory, producing so much by reason of these things which are essential to its use, is to be rated higher, because its utility is enhanced or created by the presence of these things, but here you propose to rate the things in themselves.

Mr. Herschell.—No, my Lord, pardon me, that is the fallacy of my learned friend's argument. He cited the case of Chidley *v.* the Churchwardens of West Ham, where no doubt it was held that many things were not rateable in themselves, but Mr. Justice Blackburn said though not rateable in themselves, for machinery is not rateable, which I am far from saying they ought not to be taken into consideration as enhancing the value of the land.

Mr. Justice Mellor.—If the house is empty the value is one thing, but when there are boilers and other things appropriated to the working of the factory, the factory is enhanced in value.

Mr. Herschell.—"The question for the opinion of the Court is, whether the machinery and plant hereinbefore mentioned and described in the said appendix, or any and what parts thereof are to be taken into consideration as in any way enhancing the rateable value of the hereditaments." That is all we contend for. Of course these things are not rateable *per se*, but then they say you are not to take these things into account. You are to rate it as a yard empty of these things. I say the authorities say they are to be taken into con-

sideration as enhancing the value, and I do not know of any authority to the contrary.

The Lord Chief Justice.—If you let your house fitted up with these appliances, you get so much the more for it than if you take them out, and let a tenant come in without them.

Mr. Herschell.—Yes, my Lord, and the test is what are the premises worth as they are, and therefore it is they are to be taken into consideration.

The Lord Chief Justice.—I did not understand the question. I thought it was whether they were rateable.

Mr. Edwards.—It comes to the same thing, my Lord.

Mr. Herschell.—No, it does not. If we had been asked are they to be taken into account as enhancing the rateable value our answer might have been very different.

The Lord Chief Justice.—If anybody was going into possession they would either take these things or not. If you take them away you reduce the letable value of the premises; you cannot get so much for them. If they are there you get so much more. Why, because the premises are so much the more valuable if they are there.

Mr. Herschell.—And what would these premises be let for as a shipbuilding yard?

Mr. Justice Mellor.—Take a canteen or a licensed house as long as the license exists, the house is of some value, but if the license is taken away what value has the house.

Mr. Herschell.—Or take this case, if you put in a bay window it is not rateable till it is put in, but when it is in, it enhances the value of the house.

The Lord Chief Justice.—Then it becomes part of the thing.

Mr. Herschell.—When there is machinery, though not a fixture, if it is there for the purpose of carrying on the business, you are to take it into account, and ask what a shipbuilder would give for this shipbuilding yard.

The Lord Chief Justice.—Does your learned antagonist challenge that proposition?

Mr. Herschell.—He must do so, my Lord.

Mr. Edwards.—My learned friend says it is not whether they are rateable or no, but whether they enhance the value, and he founds that upon what Mr. Justice Blackburn says in the last case I cited.

His Lordship says in this case, which is perhaps not so stated as to bring out the precise point intended to be raised, the Court is asked if certain articles described are liable to be rated, your Lordship will see it is in the end precisely the same thing.

The Lord Chief Justice.—No, it is not.

Mr. Justice Mellor.—There is a technical difficulty. An engine not fixed is not rateable, it is a mere chattel, and when it is put in the engine is not rateable, but it makes a factory of what would otherwise be a mere building with walls—it makes it a factory which could be let.

Mr. Edwards.—Your Lordship is familiar with a Lancashire factory with 350 or 400 looms attached to the floor; they are never rated, although put there by the tenant to be used during his term.

The Lord Chief Justice.—Just let me put this to you, there is a manufactory worked by means of certain machinery, which is introduced after the fabric is erected and attached to it, so far as necessary, for the purpose of working it you propose to let the manufactory with all these things there, that is one thing you get a certain rent for it, it has a certain value with the tenant who comes in. The value is greatly increased by reason of his having all these appliances which for the time are attached to the freehold. Suppose you say no, I will take them away, and leave nothing but the bare walls, you would then get a very inadequate rent.

Mr. Justice Mellor.—The looms are just like furniture in a house. They are the furniture of a mill.

Mr. Edwards.—Take, for instance, a factory, a man has the mill let to him, and it is fitted with various machinery, spinning machinery and looms, it certainly never as a matter of practice has ever been the case that they are rated.

The Lord Chief Justice.—Because they are not let into the freehold.

Mr. Edwards.—In the Halstead case they were let into the stone and leaded.

The Lord Chief Justice.—That is not usually the case is it?

Mr. Edwards.—Yes, my Lord.

Mr. Justice Mellor.—In all those cases they were chattels fixed for the purpose of being used as chattels.

Mr. Edwards.—May I kindly be allowed to read one important item? I will abandon for the moment the engine, the boiler, and the

main shafting, but this cannot be said to be such a fixture as to enhance the landlord's interest. Let me read this paragraph to your Lordships. "Three punching and shearing machines driven by their own engines, which are bolted in the main frames. The machines which weigh 14, 12 and 17 tons, respectively, have cast-iron frames and gearing. The two first stand upon wooden sleepers, the last upon a concrete foundation, both the sleepers and the said foundation being partially sunk into the ground. The first and third of the machines are attached by bolts to the sleepers, and the foundation respectively." All that class of machinery, in order to be worked at all for the trade of a ship-yard, the same as a loom, a mule, or a spinning jenny at a factory must be fixed into the stone floor. The ordinary loom is fixed into the floor. First, as this is now, take the next, a planing, boring, and slotting machine. The case finds these could be taken up from the freehold, and placed elsewhere and fixed. I admit as to the shafting, steam piping, boilers, and landlord's fixtures, I cannot have anything to say, but I cannot say where you are to stop if you get into the difficulty of really rating chattels; and with the greatest respect for Mr. Justice Blackburn, there is not any difference between asking the Court whether these machines are rateable, or whether they are to be taken into account as enhancing the value. You cannot rate furniture, and you cannot rate utensils of trade for the purpose of the trade, and these are for the purpose of the trade.

The Lord Chief Justice.—They stand upon a brick or stone foundation but they are so affixed that they can be removed.

Mr. Edwards.—Yes, you can take out the screws. If your Lordship looks at the photographs you will see they are machines not built upon the premises, but they are bulky and solid. They may be heavy, and it may be necessary to have a slotting machine steadied, but it is still only a mere chattel. Take the structure, the boiler, sinking the engine-bed, and all that is necessary for the purpose, placing the article of trade there and the shafting, I do not deny for a moment that it is rateable as part of the building or tenement to be let. I have seen a sewing-machine attached to the freehold by small nails; it might be said so of them.

Mr. Justice Mellor.—It might be said of mirrors and looking-glasses.

Mr. Edwards.—There is a distinction there.

The Lord Chief Justice.—If my memory does not mislead me, I fancy there have been cases of machines standing upon stone or brick foundation made on purpose to receive them.

Mr. Edwards.—Yes, my Lord.

The Lord Chief Justice.—And it has been held if the stone or brick foundation had been carried up, instead of the machine being put upon it, if you could have made the foundation and the thing put upon it one whole, one respective undivided thing, the whole must have been rateable, because the whole would have been part of the soil; but if you have got merely a foundation which is let into the fabric, and a machine put upon it, the machine is then no part of the foundation or part of the fabric.

Mr. Justice Mellor.—That is used to steady the machine, to enable the machine more effectually to be worked as a machine.

Mr. Edwards.—Yes, my Lord. I am quite content with that definition. I will read the definition of a punching and shearing machine. "This machine will punch," &c., &c. (The learned counsel read down to the words "in anyway thereto.") So with the planing and boring machine. "This foundation plate," that is the iron plate of the machine, "rests upon a concrete foundation, both the sleepers and the said foundation being partially sunk into the ground, the first and third of the machines are attached by bolts to the sleepers and the foundation respectively." "Then take the planing, boring, and slotting machine, weighing 58½ tons, which is driven by its own engine. It is bolted to a cast-iron foundation plate. This foundation plate rests on a concrete bed, sunk into the ground, but is not fixed thereto by any fastening." What I say, in all these cases, is rate the structure which the landlord would let to a tenant coming in to fit it as a shipbuilding yard, or who is coming to fill it with mills or looms, and rate the stone floor, the engine-bed, and all that as necessary for the machines; but because he has a valuable machine, which cost £20,000 or £30,000, which is part of his capital, it is contrary to all the principles of rating to say, however firmly that is affixed to the freehold, that that is to be rated as enhancing the value of the freehold.

Mr. Justice Mellor.—That is for the purpose of enabling the building to be used for its intended purposes, but looms and such things are generally the property of the tenant, the mills are let without anything of the sort.

The Lord Chief Justice.—Suppose there was a law to rate steam-ships, would the engines form part of the ship?

Mr. Edwards.—They would form part of the steam-ship.

The Lord Chief Justice.—What you call a steam-ship is a ship formed for the purpose of being worked by steam, but it is intended for a steam-ship, and it would still be a steam-ship, though you took the steam-engine out and put in another.

Mr. Edwards.—Yes, my Lord, my learned friend was not here when I referred to the case of the Queen *v.* Lee. My learned friend mentioned it, and your Lordship has, if I may say so, hit the point of that case. It is this, true it is, that machines and boilers, and so on, were held to be rateable, but why? Because, as your Lordship says, its existence as a gas works, without these machines, would cease. It would not be a gas works and rateable, as earning profits, unless you had those retorts, and all those things there. Your Lordship says, "The retorts, I am satisfied, are so far fixed to the freehold as to be attached and secured to it, and to become part of it, and they must be treated therefore not as removable fixtures, but as fixtures so connected as to have become parcel of it. With regard to them there is no difficulty, they are rateable as any part of the entire freehold would be. The other items seem to me, one and all, to fall within the principle of the cases referred to in the argument, Regina *v.* the Southampton Dock Company, and Regina *v.* the North Staffordshire Railway Company. It would not be a gas works without the retorts.

Mr. Justice Mellor.—A shipbuilding yard would require these things, in order to make it a shipbuilding yard.

Mr. Edwards.—No, my Lord, it would not require, for instance, a new patent drilling machine to drill holes in plates. You erect your building, you put down your engine-bed, prepare your yard, make a foundation. That is the landlord's tenement. The tenant then puts in new punching machinery and other new machinery, and works it for the purposes of the trade; but that is very distinct, the occupation of the premises might change, or suppose that instead of the old machine you required a punching machine to punch iron plates, which are made of this malleable iron, you would remove the old machine, and put the punching machine there. That is not permanently fixed. A machine may get old, and a new machine may come in, but that is not to be rated, that is, the subject matter of

rating is that which is permanently attached to the freehold, and which will not go away, except by the decay of nature. If you had a turning-lathe, a thing which is common in gentlemen's houses, fixed to the ground; and I have seen some of them, with all the tools, costing £2,000 or £3,000, no one would say that in a small house worth £20 a year a lathe, which is on the soil, is to be rated. It must be something which is part of the tenement to be let for the purpose of a building yard, or for some other purpose. Let me read what is said about the lathes, which seems to be a test case, "Four lathes, the first weighing 34 tons, attached to a heavy cast-iron foundation plate, but having a movable headstock for the purpose of widening or narrowing the gap. The foundation plate," that is the machine, "is bolted to a concrete foundation; the second is bolted to stone blocks, partially sunk in the ground; the third is partially embedded in concrete, and the fourth rests on blocks of stone partially sunk in the ground, but is not attached thereto." I will give your Lordships one other instance. They actually seek to rate a grindstone.

Mr. Justice Mellor.—What are you reading from?

Mr. Edwards.—I am using the 24th paragraph for the purpose of illustrating my argument. "A grindstone fixed to cast-iron columns of the roof by flat wrought iron stays bolted to the columns." There it is no doubt fixed, but only fixed for the purpose of being worked; and I should be content as to these items that are fixed to the soil for the purpose of being worked and being made steady, and being made sure and level for the purpose of working that those should be exempt. Perhaps with respect to the boiler it may be a more difficult question, but all I contend for in substance is that, however valuable the machine with which the tenant carries on his business may be, however cumbersome it may be, however weighty, and however strongly attached to the freehold, what is said in these cases is the intention is not to improve the value of the freehold by putting up such a machine—all the columns, the walls, the main shafting may perhaps be rated, but a machine, however weighty it may be, is not to be rated.

Mr. Justice Mellor.—It is the occupier who is rated who has these appliances, and has this machinery in the building. The question is how far is that made more valuable by matters which are really not

brought there to be used as mere chattels, but to be used for the purpose of the building for the purpose for which the building is designed.

Mr. Edwards.—Yes, my Lord, but unless that definition is very carefully guarded, it would most certainly submit a great many things to rating, which are not so by law.

Mr. Justice Mellor.—The only reason why they are not is that personal property is not rateable. How is it he is not to be rated not in respect of mere furniture, but for machines which are in the place simply for the purposes of the business, whether it be a ship-building yard or anything else?

Mr. Edwards.—You must not take the value of the premises to the actual tenant in use of the premises. It is what they would let for to any tenant from year to year, and at any moment the tenant who has brought in these valuable things, and fixed them to the soil, may remove them, or they may fall into disuse. You must clearly distinguish between the actual tools of trade which the tenant works the business with.

Mr. Justice Mellor.—If you can make out they were tools of trade.

Mr. Edwards.—It is expressed in the case—a punching machine, a planing machine, and so on.

Mr. Justice Mellor.—Possibly some of these may not be considered as enhancing the value of the building. They may be useful to the tenant, but not useful for the building, or the use for which the building is designed.

Mr. Edwards.—It is what the building will let for to a tenant from year to year, and that is wholly irrespective of articles of trade he brings upon the premises.

The Lord Chief Justice.—You say it is analogous to letting a house furnished.

Mr. Edwards.—I say it is just the same. Mr. Justice Mellor thinks that because there are valuable tools, and there is valuable machinery upon the premises used by the tenant, that you must take that as a test of what he gives for it. That is not so, because you must assume that any of those articles might be removed, and we have to see what you have left, which you cannot take away; what would be supposed to be let by the landlord would be the building, the structure for

putting the machinery upon, and all that is necessary, but certainly not the machinery which the tenant can at any time remove.

Mr. Justice Mellor.—You make no distinction between common fixtures and fixtures which are removable by the custom of trade, tenants' fixtures, removable only in consequence of being put up.

Mr. Edwards.—The trade fixtures are an exception to so-called fixtures; they may be left to remain by the tenant at the termination of his tenancy. It is that class of fixtures which I say may be rateable. Whatever enhances the value to let to the tenant I grant should be rated.

The Lord Chief Justice.—You say these things could be removed if put there by a tenant during his term.

Mr. Edwards.—Certainly; they are not the landlord's. Mr. Balfour Browne refers to them in one of the cases I cited, that silk mill case, the Queen *v.* Halstead, which seems to me to be precisely in point. The machines are mentioned in the case thus: "Many of these machines are of considerable size, some as long as 50 or 60 feet, and 3 or 4 feet wide. They are similar to those ordinarily used in silk throwing and weaving factories, and are fastened to the floors on which they respectively stand by screws passing through holes in the feet of the machines. Such fastenings are for the sole purpose of steadying the machine when in use, and are slighter than those generally adopted in other similar factories. The same object could be attained by making the machines heavier, or by placing weights upon them. Machines of the aforesaid kind are separate and distinct from each other, are movable at will, by being taken down and put up, either for repairs or re-arrangement, or change of use of the buildings from the silk trade to any other factory purpose, or any other cause, without damage or injury either to the machinery or to the building, and are commonly bought and sold, used and renewed as chattels. Then it was admitted by the appellants that the steam and water power and the main shafting were rateable; but the respondents had included in the assessment appealed against all the machinery hereinbefore mentioned, and contended that it was properly included in the assessment. The question between the parties therefore, was, whether the machinery, as described in paragraph 3, was to be included in the assessment of the premises to the poor rates or not. It was proved that it was the universal practice, according to the experience of the witnesses called, to include the steam power and main shafting, but

never to include in the assessment such machinery as that here in contest, and that no instance of the kind was known to them." I have read your Lordship's judgment. Mr. Justice Blackburn says, "I am quite of the same opinion, affirming the decision of the Court of Quarter Sessions. I do not think it necessary to enter into details at all, because on looking at the Queen *v.* Lee, that is the first case I cited, which is the last case on the subject, it seems to me that all that was there said is quite applicable to the present case; and having read over what was there said, I do not see the slightest reason to change or alter the opinion which was there expressed both by myself, and the other judges to the same effect, and applicable to the same case, I think there is no doubt the Sessions were right. In the first place, it is quite clear, as the counsel for the appellant has been urging before us, that in taking the rateable value of the demisable property, you are to take into account all things forming a part of the property which really enhances the value of the property. It is quite true in considering the rateable value you are not to consider the walls of the house as walls, nor the steam-engine fixed to the ground as a steam-engine, but you are to consider the rateable value of the walls as capable of holding chattels for working silk, and the chattels are instrumental for working it. Those are things to be taken into account for the purpose of working it, and those things have been taken into account in considering the rateable value of the warehouse, viz., the walls of the building, and the steam-engine. But then the contention here is not only is it to be considered what would be the additional rent which would be given by a hypothetical tenant, or the actual tenant for this steam-engine, and this factory, but seeing that it is capable of containing the machinery, that you are to put an additional rate for the value of the machinery which is contained in it." That is what they want to do here. "Now upon that the question comes entirely to whether they are part of the premises or not." Your Lordships' would not say, I am sure, however big the machine may be, that it is part of the premises.

Mr. Justice Mellor.—Do you contend that a machine which is put up by the landlord would be rateable, and if put up by the tenant would not be rateable.

Mr. Edwards.—If it is part of what the landlord lets, I should not say that would not be rateable as enhancing the value.

Mr. Justice Mellor.—Should not it be if put up by his tenant.

Mr. Edwards.—It is answered entirely by an observation of Mr. Justice Blackburn. "It comes entirely to the question whether these things are part of the premises or not."

Mr. Justice Mellor.—I quite agree. I only ask you whether you make a distinction between things (which enhance the value of the premises) belonging to the landlord, and things put up by the tenant, probably by the landlord, saying, "I will take less if you do that, than I should otherwise do."

Mr. Edwards.—If they were chattels affixed for the purpose of carrying on a trade, I should say in whosever hands they were, whether the landlord's or the tenant's, they would not be rateable. Mr. Justice Blackburn solves that difficulty. His Lordship says, "I quite agree with what is said in the case of Queen *v.* Lee. It is not a question whether they are severed or not. Things may be quite severed by the tenant or by the sheriff, or by anybody else, but as long as they are part of the premises they are to be taken into account as part of the rateable value, not as enhancing the rateable value merely, but as being in themselves a part of the premises, and as was pointed out in the Queen *v.* Lee, following out the decision in Hellawell *v.* Eastwood, the question was whether they were rateable."

The Lord Chief Justice.—You cited a case Mr. Herschell in which my brother Blackburn gave a decision. I did not catch the name of it.

Mr. Herschell.—That was one my learned friend cited, Chidley *v.* the Churchwardens of West Ham.

Mr. Edwards.—That is in the 32nd Law Times, page 486. I am still continuing to read the Queen *v.* Halstead. "The great question was whether they were attached to the premises for the permanent and continued enjoyment of them, attached to them as accessories, in which case they become part of the premises, or whether they were merely attached to them to steady and more advantageously enjoy the machines, and which you are to take into account as well as the attachment. In taking that view I will only add that Vice-Chancellor Wood, in the case he decided, seems to have decided it perfectly right and perfectly consistent with the case of Hellawell *v.* Eastwood, except that he seems not to have been aware that you cannot distrain the tenant's fixtures, although he has the right to remove them, and he seems to have thought he was deciding against Hellawell *v.* Eastwood, when he was in fact deciding with it." Your

Lordship and Mr. Justice Mellor say—"It would be as reasonable to rate the furniture in a house which was to be let for lodgings, as to rate the machinery in this mill. The question which would test it was the machinery brought to the mill for the purpose of benefiting the steam-engine, which was a part of the mill, or for the benefit and use of the person who bought it. He saw no distinction between the case before the Court, and the Queen *v.* Lee." Mr. Justice Shee "thought it would be impossible to hold that property such as that described in the case could be rated to the relief of the poor without holding that all personal property should be rated." They were warping machines, silk throwing machines, and all other necessary machines.

Mr. Justice Mellor.—They were all in the character of the looms.

Mr. Edwards.—The heavier machines could make no difference if they were still tenant's chattels. And in the case last-mentioned of Chidley *v.* the Churchwardens of West Ham, this appears to me to be a strong authority in my favour. The note is this: "The premises of a distillery contained tanks, which formed the roofs of rooms and houses, boiling tanks and mash tuns lying on brick piers against the walls, which formed the floors of some of the rooms, and were connected by pipes to other houses, reservoirs, and other articles necessary for the process of distilling. They were all heavy, and either unattached except by the communicating pipes to the walls, or piers upon which they stood, or fastened only by screws for the purpose of being steadied. Each was to be bought and sold as a separate article, and if all were removed the premises might be used for other manufacturing purposes. Held that these articles were not fixtures, and could not be properly rated in the assessment of the premises to the poor rate."

The Lord Chief Justice.—Held that these were not fixtures.

Mr. Edwards.—That they were not fixtures, and could not be properly rated in the assessment of the premises to the poor rate. There is an elaborate description of the machines—40 or 50 paragraphs. I admit they were not the same kind of machines, but it is not because a machine is bigger, heavier, and requires a more solid attachment to the foundation, it is to be rated, the question is what was the intention. The intention with which these machines were brought there was not that the tenement should be improved.

The Lord Chief Justice.—I do not quite agree with that phrase "intention." A man may think that in the way he is attaching a given machine to the freehold, he would be entitled to remove it when he goes away, but he may be mistaken. He may have made it as effectually a part of the freehold as that his purpose of removing it when the tenancy expires may be defeated. If you substitute the word "effect" for "intention," the proposition is right.

Mr. Edwards.—Yes, my Lord. What Mr. Browne says in commenting upon it is, "making, however, not the attachment, but the meaning and intention of the attachment, the foundation of a legal rule, is proceeding rationally, and getting closer to a real as distinguished from an apparant distinction. The intention is, what governs the conduct of men amongst men, and it is upon that conduct that the law is to be based, as it is to prevent aberrations from the ordinary conduct of mankind that is the object of its institution. In this matter, then, we cannot but regard the law as perfectly uniform, and the rule which has been laid down as philosophically sound. That principle is that it is the intention of permanency which is to guide us in saying that the machines or implements which have been attached to the premises are attached in such a way as to become part and parcel of the premises." I do not use the word "intention," but nobody would say that the natural result of bringing those machines into this yard would be that they were to be attached permanently to the freehold, so that if they remained they would make the subject matter more valuable. I do not think the Queen *v.* Lee is in anyway in conflict with the decisions in the Queen *v.* Halstead, and Chidley *v.* the Churchwardens of West Ham.

The Lord Chief Justice.—The prior cases are cited in that.

Mr. Herschell.—Yes, my Lord, but there is one case to which your Lordship's attention has not been called which seems to me stronger than this case. It is the case of the Queen *v.* the North Staffordshire Railway Company, and is reported in the 30th Law Journal, Magistrates' Cases, page 68.

Mr. Edwards.—These are all cited in the Queen *v.* Lee.

Mr. Herschell.—Here it was distinctly held they were to be taken into account. "The railway company were obliged in order to work their line properly to provide, in addition to such rolling stock as above referred to, certain turn-tables, cranes, weighing machines, stationary steam-engines, lathes, electric telegraph and apparatus,

office and station furniture, and gas works used for supplying the stations with gas; held that in rating the company a deduction should be allowed in respect of such of the above things as were movable, such as office and station furniture, that none should be allowed in respect of such as were so attached to the freehold as to become part of it, and that in respect of such as though capable of being removed, were yet so far attached as that they were intended to remain permanently connected with the railway, or the premises connected with it, and to remain permanent appendages to it, as essential to its working, no deduction should be allowed." Now comes your Lordship's judgment as to the rateability. Your Lordship says—"The first question is whether the per centage amount to be allowed for interest on capital and tenants' profits is to be calculated upon the cost price of the rolling stock, or on the depreciated value which that stock may bear at the time the rate is actually made. We are of opinion that the allowance must be made with reference to the actual, and not to the original value. The point has already been decided by this Court in the case of the Queen *v.* the Great Western Railway Company, in which decision we entirely concur. In addition to the reasons given in the judgment of the Court in that case, it may be observed that as under the Parochial Assessment Act, tenants' profits upon stock must necessarily be calculated with a view to their deduction from the gross earnings in order to ascertain what a tenant would give for the entire property, nothing could be more inconvenient than that a different principle should prevail in calculating the profits in the two cases. Now, the question when considered under the Parochial Assessment Act, must be looked at not with reference to the railway company who may have expended on the purchase of the stock a much larger sum than such stock would now realise, but with reference to an incoming tenant, and the amount of capital which such tenant would have to lay out in the purchase of the rolling stock necessary to carry on the undertaking. It is obvious that what it would be worth the while of a person or company about to embark in a commercial undertaking to give as rent for the premises in which it was to be carried on, would depend on the amount to be deducted in addition to repairs, and other necessary out-goings from the gross earnings in respect of the profits due to the capital to be employed in the concern. But it is plain that a tenant would calculate such profits on the amount of capital actually required

to be expended on the stock, not on what may have been the value of such stock at some other time or in other hands. Now it must be assumed that the stock in its existing condition is sufficiently effective to produce the earnings which after the necessary deductions constitute the improved value of the railway, and it cannot reasonably be supposed that if the company were about to give up the undertaking they would not be willing to part with the stock at its actual value, or that if they refused to do so, the incoming tenant could not procure other stock of an equally efficient character at its real value to supply the deficiency. In estimating therefore under the 6th and 7th of William the 4th, chapter 96, what a tenant would pay, the profits must be calculated on the actual value of the stock. It cannot be supposed that in exempting profits under the 6th and 7th Victoria, chapter 48, a different principle of calculation was intended to be acted upon. The second question is whether the company are entitled to a deduction in respect of various articles therein specified, being things necessary for carrying on the business of the company. The articles to which such a question may have reference may be divided into three classes, first, things movable, such as office and station furniture; secondly, things so attached to the freehold as to become part of it; and thirdly, things which though capable of being removed are yet so far attached as that it is intended that they shall remain permanently connected with the railway, or the premises used with it, and remain permanent appendages to it as essential to its working. It is clear that in respect of the first class of articles a deduction should be allowed. It is equally clear that no deduction should be allowed as to the second. As to the third the question is finally settled by the decision of this Court in the case of the Queen *v.* the Southampton Dock Company." And your Lordship held that machinery fixed in the way I have described, except the office furniture and so on, was to be taken into consideration as enhancing the rateable value. I say there is no distinction between that case and this, besides this case finds these are intended to be used as part of the business carried on.

Mr. Edwards.—I should not contend that the permanent works of a railway, such as turn-tables &c., should not be rated.

Mr. Herschell.—These are turn-tables.

Mr. Edwards.—I was aware of those cases before. They are referred to in your Lordship's judgment in the Queen *v.* Lee. Your

Lordship says, speaking of the retorts,—"The retorts I am satisfied are so far fixed to the freehold as to be attached and secured to it, and to become part of it, and they must therefore be treated, not as removable fixtures, but as fixtures so connected with the freehold as to have become part of it, and they must therefore be treated not as removable fixtures, but as fixtures so connected with the freehold as to have become parcel of it. With regard to them there is no difficulty, they are rateable as any part of the entire freehold would be. The other items seem to me one and all to fall within the principle of the cases referred to in the argument, Regina *v.* the Southampton Dock Company, and Regina *v.* the North Staffordshire Railway Company. In the latter case, the Court after time taken to consider, laid down this rule, that when things which though capable of being removed, are yet so far attached as that it is intended that they should remain permanently connected with the railway or other undertaking, or with the premises used with it and remain permanent appendages to it as essential to its working, those must be taken to be things increasing the rateable value of the land, and in respect of which the company are entitled to have a deduction made. That principle applies directly to the present case. There can be no doubt that the purifiers and the gas-holders are parts of the works which are absolutely necessary for the manufacture of gas, which is the purpose of the undertaking. There can be no doubt that it was intended, when those things were erected, that they should remain permanently connected with the premises; that they should remain permanent appendages to it as essential to its working." That is the point.

The Lord Chief Justice.—To become part of it.

Mr. Edwards.—Yes, my Lord. "They therefore fall within the rule laid down by the Court in that case." This principle exactly applies to the present case, and I should not dispute it for one moment. There can be no doubt that gasometers and purifiers are things which are absolutely necessary for the manufacture of gas, which was the purpose of the undertaking. There can be no doubt it was intended when those things were erected that they should remain permanently connected with the premises, that they should remain permanent appendages to it, essential to its working. They therefore fall within the rule laid down by the Court in that case. If the company desired to abandon this undertaking, and to let the gas-works to another company or any individual, what the lessee would propose to take, and

pay rent for would not be land independent of all these articles, all of them essential to the manufacture, viz., gas, the retorts, purifiers, and gas-holders are all as essential to the using and occupying these premises as gas-works, as any other thing that can possibly be suggested, however permanently attached to the freehold. They seem, therefore, clearly to come within the principle laid down in that case. And I do not suggest for a moment that the permanent works of a railway, the turn-tables, lines, platforms, stations, and machinery for the permanent way should not be rated. The intention there is to tax the thing which is worked; but here what I contend is that you are not to tax my tools of trade, for it comes to that.

Mr. Justice Mellor.—Would you be so good as to read the paragraph which Mr. Herschell refers to as applying to all these matters in dispute?

Mr. Edwards.—I will read what is said about them. Your Lordship should read the whole case to get at the exact meaning. I will read paragraph 26. "In the above descriptions where machines are spoken of as being bolted to the foundations, or to the walls, roof, columns or pillars of the buildings, such machinery could not be taken to pieces and removed without the nuts of such bolts being unscrewed, or such bolts being extracted; but except removing the bolts, the whole of the machinery could be removed without any disturbance or injury to the freehold, and when removed might be used in and are suitable to be used in any other similar mill or manufactory.

Mr. Justice Mellor.—I meant these were all intended to be permanently used.

Mr. Edwards.—I will read the next one too. "It is to be understood throughout the above descriptions, that except when fastenings and connections are stated, all the machines are retained in their places by their own weight merely. That before being connected as described, each of them, except the railway mentioned in paragraph 25, is a separate and complete article in itself, known in the trade as such."

Mr. Justice Mellor.—The paragraph I refer to is the 29th. "The whole of the buildings, foundations, engines, shafting and other machinery included in the Appendix, and hereinbefore referred to were intended to be permanently used in the shipbuilding and repairing yard, the subject of the assessment, and are now used by the

appellant for the purpose of building and repairing ships and vessels, and for manufacturing and repairing machinery for such ships and vessels, and are intended to be permanently used for such purposes."

The Lord Chief Justice.—You see there is this distinction, I do not know that it will be so very much but, nevertheless, it is a substantial distinction in the case of the railway, and the rails as in the case of the gasometer; the things in question are part and parcel of the building itself, they are subordinate to the building, but they are absolutely essential to it, the building is useless without them, but in the case of machinery, the machinery is the principal, and the building is the accessory. You want the building for what purpose? In order that you may work the machines, that they may be protected from the elements, and that they by becoming attached acquire stability, but the engines are the things, they form no part of the building, except if they are so attached to it as that they become part of the fabric.

Mr. Edwards.—Your Lordship dealt with that expressly in the case I have referred to. What your Lordship said in the Queen *v.* Lee, was: "Here we cannot doubt, as a matter of fact, that when these purifiers, gas-holders, steam-engines and boilers which are absolutely essential to the working of the manufacture were erected, it was with a view of their remaining permanently there for the benefit of the inheritance."

The Lord Chief Justice.—The building is really accessory to the machinery.

Mr. Edwards.—It is so, my Lord. One of these is a crane. They have rated them outside the building altogether.

Mr. Herschell.—The cranes were rated in the Queen *v.* the North Staffordshire Railway.

Mr. Edwards.—The cranes were rated with the railway, because like rails and turn-tables, they were essential for the working of the structure, but here there is no connection between a punching machine or a drilling machine, and the building. You might take out one and put another in.

The Lord Chief Justice.—You might use it in another place.

Mr. Edwards—Yes, my Lord. It is carefully stated in the case. "In the above descriptions where machines are spoken of as being bolted to the foundations, or to the walls, roof, columns, or pillars of the buildings, such machinery could not be taken to pieces and

removed without the nuts of such bolts being unscrewed, or such bolts being extracted; but, except removing the bolts, the whole of the machinery could be removed without any disturbance or injury to the freehold, and when removed might be used in and are suitable to be used in any other similar mill or manufactory." Then a great many of them stand by their own weight. Some of these machines are actually in the yard.

(Their Lordships conferred).

The Lord Chief Justice.—This strikes me as being a case the principle involved in which is of very considerable importance, in which I should hope there would be a binding and final authority upon the subject, and in which we may have to consider the effect of these cases, which perhaps, may prove to be somewhat in conflict one with another. I think it is extremely inconvenient to have such a case as this discussed, and decided by two judges, because they may differ. If you had a single judge he could not differ from himself—it would be difficult. I would not say he could not, but my learned brother and I might differ. It so happens my brother Lush is at large. He cannot find a place in which to sit at *Nisi Prius*. He has sought for one in vain. It has therefore occurred to my mind that, my brother Lush being unoccupied, if you would not mind going over the points again, we might as well have him in, so that in case of a difference of opinion, we should have his assistance. It is possible my brother Mellor and I may not agree, and then it would be desirable to have a third judge.

Mr. Herschell.—Yes, my Lord, because there is no appeal in this case.

The Lord Chief Justice.—No, my brother Lush will come in after the adjournment. (A short adjournment took place after which Mr. Justice Lush came into Court.)

Mr. Edwards.—The appellant is the owner and occupier of a ship-building yard at Bishopwearmouth, and this is a case which is stated for the purpose of getting the opinion of the Court, if possible, upon some very important questions as to the rating of fixtures, so called, and the item in the rate is machinery and plant, and the case sets out a Schedule in 13 different classes showing how the various articles proposed to be rated are in effect fixed to the soil, and how they are worked.

Mr. Justice Lush.—Then the machinery is not separately rated.

Mr. Edwards.—No, my Lord.

Mr. Justice Lush.—It is rated as a part of the freehold.

Mr. Edwards.—Yes, my Lord. They rate in this way, "James Laing, shipbuilding yard, workshop and drafting loft, offices, stables, cottage, land, machinery, plant, &c."

Mr. Justice Lush.—That must mean fixed to the building.

Mr. Edwards.—Yes, my Lord.

Mr. Justice Lush.—That increases the value of the building.

Mr. Edwards.—Yes, my Lord, with the intention of permanently contributing to the yard to let to a tenant from year to year. There are a great number of cases, some of which I have not much confidence in, but I have in the majority of the thirteen articles, if your Lordship looks at this photograph for instance, you will see that the planing machines are bolted into the stone, and are removed from time to time as new ones are got. The question for the Court is, "whether the machinery, and plant hereinbefore mentioned and described in the said Appendix, or any and what part thereof, are to be taken into consideration as in any way enhancing the rateable value of the hereditaments included in the aforesaid assessment, and if any parts are to be taken into consideration as enhancing the rateable value, upon what principle are they to be valued or rated, or taken into consideration."

Mr. Justice Lush.—Is not it a question of fact whether it is so annexed to the premises that it cannot be moved without affecting the premises.

Mr Edwards.—If your Lordship says that is the test, the greater majority of cases would be decided in my favour, because the case finds this. "In the above descriptions where machines are spoken of as being bolted to the foundations or to the walls, roof, columns, or pillars of the buildings, such machinery could not be taken to pieces, and removed without the nuts of such bolts being unscrewed or such bolts being extracted; but, except removing the bolts, the whole of the machinery could be removed without any disturbance or injury to the freehold, and when removed might be used in, and are suitable to be used in any other similar mill or manufactory."

Mr. Justice Lush.—That is rather like the looms.

Mr. Edwards.—Yes, my Lord, in the case in which your Lordship was a party to the judgment. In the 27th paragraph it states: "It is to be understood throughout the above descriptions that, except when fastenings and connections are stated all machines are retained

in their places by their own weight merely. That before being connected as described, each of them, except the railway mentioned in paragraph 25, is a separate and complete article in itself, known in the trade as such."

Mr. Justice Mellor.—Where are you reading from?

Mr. Edwards.—I am reading from the statement of the case, two paragraphs 26 and 27. I will go to 28 and 29 which follow. It seems to me almost to come within the terms of the decided cases, "In the above descriptions."

Mr. Justice Lush.—I have not got so far as that.

Mr. Edwards.—I was wishing to be short.

Mr. Justice Mellor.—I cannot find what you are reading. I see the case is stated by consent and so on, then there are the paragraphs 1 and 2 and so on, which of those are you reading?

I begin with the second, which is this: "The premises comprise several acres of land, upon which are constructed the necessary slipways for building and launching iron and wooden ships, a large graving dock for repairing iron and wooden ships, and large and extensive workshops, warehouses, and other erections necessary to carry on the above trades. In and upon such premises are certain valuable machinery and plant, used for the purpose of the business. No question arises as to the rating of a part of the premises, viz.:—the workshop, warehouse and office (No. 2160), nor of the shipbuilding yard, workshop, graving dock, quay, workshop, warehouse, land (part of No. 2162), nor of the shipbuilding yard, workshop, drafting office, stables, cottage and land, (part of No. 2163), nor of the tenements gallery (No. 2164). The question is whether the whole of the machinery and plant, or any portion of such machinery and plant which is hereinafter described in detail, and numbered in classes 1 to 13, is rateable or is to be taken into consideration in ascertaining the rateable value of the premises. The machinery and plant in question is divided into 13 classes mentioned in the Appendix, but each of these classes is subdivided so as to show the nature of the several machines, the purposes for which they are used, and further in those cases in which the machines are not attached to the freehold, the mode in which they are fastened so as to be available for the purposes for which they are used. For the purpose of illustrating the nature of the questions which arise, the description of certain of the principal pieces of machinery have been extracted

from the Schedule contained in the Appendix, and is contained in the 24 following paragraphs. For the purpose of reference, the pages of the Appendix are given in the margin."

Mr. Justice Lush.—You contend that they are not rateable.

Mr. Edwards.—I am going to contend formally that all are not rateable, one or two I shall admit are rateable, but the important question to determine is this, whether large machines put upon the premises for the purpose of trade which are bought as machines, merely by being fixed, bolted, or leaded into the structure to rest upon the stone or the concrete, whether they as valuable machinery are to be taken into account as a separate rate, or for the purpose of enhancing the value of the building.

Mr. Justice Lush.—They cannot have it as a separate rate.

The Lord Chief Justice.—There are two questions, first, whether they are part of the building, and therefore whether the building including them as a whole is liable to be rated additionally by reason of the value thus added to it, and whether, although they may not be actually part of the building, they are so connected with it so as to increase its value that it ought to be rated.

Mr. Edwards.—My whole argument I submit is as good for the one as the other, because if they are articles of trade, and are taken into account either by being separately rated or as enhancing the value of the building. I say that is against the cases.

Mr. Justice Lush.—I cannot see how in any view of the case they could be separately rated. It is the building that is to be rated, if they are separated from the building they are chattels.

Mr. Webster.—We never suggested they should be separately rated.

Mr. Edwards.—In the West Ham case they were separately rated, but the question here is whether they are fixed by the tenant for his trade, they enhance the value of the building.

Mr. Justice Mellor.—How does it find that they are fixed by the tenant.

Mr. Edwards.—We must keep in our minds the hypothetical tenant.

Mr. Justice Mellor.—But also keep in your mind the occupier is rated.

Mr. Edwards.—The occupier is rated and pays the rates, but you must get not what this particular occupier has or may get out of the

machinery, however valuable it may be to him, you have to ascertain what is the value from year to year of what is supposed to be let to him. I will go on. Your Lordships have first the boilers, which are described in the usual way, as fixed in a brick setting surrounded by bricks. Then there are the horizontal engines, some of which are "bolted to a stone foundation which is partially sunk in the ground. The engine drives all the machinery on the east side of the high yard, and in the joiners' shop. A vertical high pressure compound steam-engine weighing about 10 tons. The cylinders and some parts are mounted upon a heavy cast-iron pillar, which is bolted at the base to a large bed stone sunk in the ground, and at the side of the main wall of the building, and is fixed by bolts. This engine is provided with condenser, and with air and circulating pumps, which are fixed to a concrete foundation sunk into the ground, and are driven by a bolt from the main shaft through a counter shaft. This engine drives all the machinery in the low yard, excepting those described as having their own engines attached. A pair of double cylinder vertical engines bolted to one of the cast-iron columns which support the roof, and unattached to any foundation. A portable engine with boiler mounted on cast-iron wheels, so that it can be moved from place to place."

Mr. Justice Lush.—How about the boilers?

Mr. Edwards.—I contend within the principle which has been laid down that the boilers were not put there, as is said in some of the cases, with the view of permanently adding to the value of the freehold, but are simply articles which may be removed, and new ones substituted, and which are simply there, not for the purpose of making it a shipbuilding yard, but for the purpose of driving the machinery.

Mr. Justice Lush.—How does that signify? They are fixed.

Mr. Edwards.—I frankly admit, my Lord, I have less ground for struggling in respect to the boilers, but I am bound to take the point, as in some cases fixtures bricked in, and fixed in, have been held not to be rateable.

Mr. Justice Mellor.—There may be various cases. A landlord may let a building in a certain state, another landlord may let it in another state, and a tenant for the sake of paying a smaller rent may undertake to do other things which the landlord would have done. If it is part of the premises it is immaterial whether it is done by the landlord or by the tenant.

Mr. Edwards.—Whether it is put in by the landlord for the purpose of the tenant taking these machines, or whether the tenant puts it in, does not matter.

The Lord Chief Justice.—I let you my building to be available for some sort of a manufactory. I do not let you the engines which will have to be introduced into the building for the manufacture, or if I do let you something which you would otherwise have to introduce yourself, I charge you so much more for it.

Mr. Edwards.—That may be, my Lord.

The Lord Chief Justice.—The test is, whether it is part of the entire fabric, whether it is so united to the fabric as to form a part of it.

Mr. Edwards.—That is the test.

Mr. Justice Mellor.—Do you contend the rental value, and the rateable value are different things?

Mr. Edwards.—They may be.

Mr. Justice Mellor.—It must not be left to accidents as to whether a landlord has done this or that, but it is the value of premises liable to the rate, are they enhanced in value?

Mr. Edwards.—If Mr. Justice Lush will allow me for a moment, I will pass over the more doubtful question.

Mr. Justice Lush.—Suppose you begin at the boilers and tell us how much of that you dispute. What of the boilers do you say are not fixtures?

Mr. Edwards.—Not rateable fixtures. The word "fixtures" is very ambiguous.

Mr. Justice Lush.—I will drop that word then. What part of these boilers do you say is not to be taken into account?

Mr. Edwards.—Your Lordship has, no doubt, seen hundreds of times an iron boiler taken along through the streets.

Mr. Justice Lush.—Of course I have, and I have never seen an iron beam intended to be used to support a house, but where set up it becomes part of the house.

Mr. Edwards.—If an iron beam is put in to alter its structure it is to be taken into consideration, but I say a boiler is a thing you can buy at any time, and take away without interfering with the structure.

Mr. Justice Lush.—So I suppose you can with brewers' vats. Do you say they are not to be taken into consideration?

Mr. Edwards.—Your Lordship will find in some cases where things

are as much fixed as the vats would be, that those articles are not held to be rateable?

Mr. Justice Lush.—I see here "a boiler 33 feet long by 4 feet 6 inches in diameter, which is set in ashlar masonry, lined with fire brick, partially sunk in the ground." Do you say that is not a fixture?

Mr. Edwards.—I say that is not a fixture. That, however, is my weakest case. That is not what I must contend for. I will pass from that, and state shortly what is my general proposition. It includes almost all the other articles with the exception of the boiler and the engine. If your Lordship will kindly go to paragraph 10 of the case you will see it is headed "punching and shearing machines." I will read what is said about "three punching and shearing machines, driven by their own engines, which are bolted to the main frames."

Mr. Justice Lush.—What does "main frames" mean?

Mr. Edwards.—I am trying to find out.

Mr. Justice Lush.—The building I suppose.

Mr. Edwards.—I do not know, my Lord.

The Lord Chief Justice.—The main frames I should take to be the frames of some machinery.

Mr. Edwards.—I should have thought so, my Lord. I should have read it "the engines were bolted to the main frames of the machine." That is how I read it first.

The Lord Chief Justice.—Then of what machine?

Mr. Webster.—There is the photograph.

Mr. Edwards.—It is given at greater length in the Appendix.

Mr. Justice Lush.—Where are the main frames?

Mr. Edwards.—I am afraid it is not shown in the photograph. If your Lordship will let me read what is said in the Appendix it is clear there. The Appendix is referred to in the case it gives a more detailed account. If we read paragraph 10 in the case, and clause 4a, page 6 of the Appendix, I think we shall understand how this machine is fixed. I will first read that in the case. "Three punching and shearing machines, driven by their own engines, which are bolted to the main frames. The machines which weigh 14, 12 and 17 tons respectfully, have cast-iron frames and gearing." I think that is the frame to which the engine is attached. "The two first stand upon wooden sleepers, the last upon a concrete foundation, both the sleepers and the said foundation, being partially sunk into the ground. The first and third

of the machines are attached by bolts to the sleepers and foundations respectively." It is mentioned in the Appendix thus. This machine will punch 1½ inch holes through 1¼ inch plate 28 inches from the edge, and has corresponding shearing power. This machine has the usual cast-iron frames, gearing, &c., &c., and is driven by its own engine of about 7-horse power, bolted to the main frame of the machine itself, and stands upon wooden sleepers partially sunk into the ground to the depth of about 6 inches, and to which it is fixed by 4 screw-eye bolts ⅞ths in diameter.

Now, will your Lordship just follow me one step further. In the end of the case there is this statement in respect of those punching and shearing machines. If your Lordship will kindly go to paragraph 26 which I read, and let me read it in connection with the description of the punching and shearing machines I shall be glad. "In the above descriptions," that is including the one I have just read, "where machines are spoken of as being bolted to the foundations, or to the walls, roof, columns, or pillars of the buildings, such machinery could not be be taken to pieces, and removed without the nuts of such bolts being unscrewed, or such bolts being extracted; but, except removing the bolts, the whole of the machinery could be removed without disturbance or injury to the freehold, and when removed might be used in any other mill or manufactory." So that they have the tenant purchasing in the market, (your Lordship will see upon the photograph some well known maker or name of machine,) he buys that for so many hundreds, screws that on to the premises, bolts it and works it for the purpose of his trade.

Mr. Justice Mellor.—The result of your extracting from the statement certain articles is that you take the portion of the case most favourable to you, but at the same time read the next paragraph.

Mr. Edwards.—The reason I am taking the cases most favourable to me is this, I should probably not argue some other parts, and it will save your Lordships' trouble if I yield them. But what I am concerned with really is this, that heavy machinery like looms, or planing machines which can be bought as chattels, and which are fixed to the ground by means of screws, bolts or nuts, are laid in that category.

Mr. Justice Mellor.—If they are like looms there is no question to decide.

Mr. Edwards.—Then look at the 11th paragraph, surely they cannot be called rateable.

Mr. Justice Lush.—Then have you done about the punching machines.

Mr. Edwards.—Yes, my Lord, I have said that the planing, punching and shearing machines are articles used for the purpose of trade, which are only fixed for the purpose of being steadied and worked, and therefore had not been so fixed to the soil as to form part of the subject matter of the rating; it is not, therefore, as has been said in some of the cases for the permanent improvement of inheritance, nor was it put there with that intention. It is not like a beam in a wall for the purpose of supporting the structure or anything of that kind, but it is simply a tool of trade, which from its size requires to be fixed upon the ground as by screws or otherwise, so as to be capable of being well worked, and never have machines of the character stated here been made either the subject of rating separately by themselves, or by enhancing the value to a tenant from year to year, and when your Lordships' look at the cases I think that you will be of opinion that is so.

Mr. Justice Mellor.—If you will give us the clause, that is one of the elements that may be taken into consideration.

Mr. Edwards.—I will read the 28th, "in the cases in which machines are stated to rest upon, or to be bolted to stone, brick, wood or concrete foundations, such foundations were specially constructed for the purpose of securing the said machines." Now, I contend with reference to the paragraph on which we now are, those punching machines are not the subject of rating; I never heard and it has never been decided that such articles are a subject of rating either as being part of the tenement, or as a subject of rating of themselves.

Mr. Justice Mellor.—Is that a statement in the case as your own experience or what.

Mr. Edwards.—Not a statement in the case. In the case of the silk mill, which I have already cited, you will see how clearly it was put.

Mr. Justice Lush.—Where do you find the main frames here, are they main frames of the machine.

Mr. Edwards.—By reading the Appendix which gives a fuller description than the case does. You will find it at page 7, clauses 4, A and B.

Mr. Justice Lush.—Punching and shearing machines.

Mr. Edwards.—It says, "this machine has the usual cast-iron frame, gearing, &c., and is driven by its own engine of about 7-horse power, bolted to the main frame of the machine itself."

Mr. Justice Lush.—That is the engine, but the punching machine is bolted to some main frame.

Mr. Edwards.—No, bolted to the ground.

Mr. Justice Lush.—Yes, I suppose that is so.

Mr. Edwards.—Yes, sunk into the ground.

Mr. Justice Lush.—Yes, it means the frames of the machines, the engines are bolted to the frames of the machine. Now two of the machines stand upon wooden sleepers let into the ground, the third stands upon a concrete foundation built into the ground.

Mr. Edwards.—Yes, I quite agree that the third is attached to a concrete foundation sunk into the ground, while the other two stand upon sleepers. You have steady sleepers, and upon them is attached your heavy machine, the first one being attached by four screw-eye bolts to bolt it down.

Mr. Justice Lush.—I suppose like the sleeper of a railway.

Mr. Edwards.—A sleeper of a railway would be rateable.

Mr. Justice Lush.—May you not take up every rail upon a railway by unbolting.

Mr. Edwards.—Yes.

Mr. Justice Lush.—You may as well say that the railway is not rateable.

Mr. Edwards. Not at all. The case of the Queen *v.* Lee where my friend cited from the Lord Chief Justice's judgment, that all these matters were subject of rating for this reason, the thing you have in your railway you cannot say there would be a railway without the rails, but in this case the machines are not in any way part of the building to let like the railway, which the railway could not be a railway without.

Mr. Justice Mellor.—You say the railway could not be a railway without rails, this shipbuilding yard may still be a yard although all the machinery for building ships is taken out of it.

Mr. Edwards.—Take these punching machines, they are brought as a whole machine from the machine makers, they are in use for a certain time, and then perhaps disused and another put in, all used for the purpose of making rivets and punching holes, but they are not a part of it because it is found in the case that they may all be taken away, and used elsewhere.

Mr. Justice Lush.—That does not signify, I do not at present see the distinction between a rail and this punching machine. Every rail may be unbolted and taken up.

Mr. Edwards.—But then you would not have a railway.

Mr. Justice Lush.—It is not the railway, it is because the ground is permanently improved by a railway being fixed in it and used. If you could suppose the engine to travel safely merely on rails laid on the ground it would not be rateable at all. It is because the rails are fixed into the ground that they are rateable, that is they enhance the value of the ground. Now they are fixed in the same way, you may unfasten a bolt, and take up the rail. It is not rated *es nominee* as a rail that is not necessary, it is because the land is so far improved by what is fixed into it, and the measure of it is the profits. Now the rail is bolted into the sleeper just as this is, and the sleeper is let into the soil, and is a fixture on the soil. You cannot take a sleeper out without disturbing the soil, yet each sleeper may be unbolted and removed.

Mr. Edwards.—As a brick may be put in a building and removed; but let us go back to the case we were on this morning, and which deals with the class of cases you are on, such as gas works or railways, the Queen *v.* Lee, I quite admit the thing without which the whole could not be, is rateable as part of the thing.

Mr. Justice Mellor.—I do not follow that proposition.

Mr. Edwards.—That is to say you could have a shipbuilding yard without a Nasmyths hammer or machine, you might have John Jones' machine. It would still be a shipbuilding yard, but if you take out a rail, and do not put it back again there would be no railway.

Mr. Justice Mellor.—I must assume on the facts stated that all these things are not necessarily attended to be permanently used for the purposes of the yard, and the objects of the building.

Mr. Edwards.—Might I call attention to a few words of the Lord Chief Justice's judgment in the Queen *v.* Lee, in the Law Reports, 1st Queen's Bench, page 250. In this case there is a piece of railway, I am not going to contend for a moment that that is not part of the soil, but here are the simple tools of trade like a loom or lathe, or a sewing machine, and certainly cannot form in my contention any part of the subject of rating. Now in the Queen *v.* Lee, the whole subject of rating water works and gas works was discussed,

and there, although they could be removed, yet as they formed part of the whole structure, and so were rateable was a question gone into. The Lord Chief Justice in dealing with the retorts, says, "The retorts I am satisfied are so far fixed to the freehold as to be attached and secured to it, and to become part of it, and they must be treated therefore not as removable fixtures, but as fixtures so connected with the freehold so as to become parcel of it. With regard to them there is no difficulty, they are rateable as any part of the entire freehold would be. The other items seem to me, one and all, to fall within the principle laid down in the cases referred to in the argument in the Queen *v.* the Southampton Dock Company, and the Queen *v.* the North Staffordshire Railway Company. In the latter case the Court after time taken to consider, laid down this rule :—that when things which, though capable of being removed, are yet so for attached as that it is intended that they should remain permanently connected with the railway or other undertaking, or with the premises used with it, and remain permanent appendages to it as essential to its working, those must be taken to be things increasing the rateable value of the land, and in respect of which the company are not entitled to have a deduction made."

Mr. Justice Lush.—Is not that exactly the case here with these things.

Mr. Edwards.—No, here, these punching machines and the boring and riveting machines may be used, and at any moment taken out.

Mr. Justice Lush.—Yes, but they are put there with the intention that they should be permanent.

Mr. Edwards.—For the tenant to work.

Mr. Justice Lush.—Of course, I should think it came within the very terms.

Mr. Edwards.—Your Lordship will find preceding cases where it has not been so decided. Let me call attention further to the judgment on which the Queen *v.* Lee proceeded :—"There can be no doubt that the purifiers and the gas holders are parts of the works which are absolutely necessary for the manufacture of gas, which is the purpose of the undertaking. There can be no doubt that it was intended, when those things were erected, that they should remain permanently connected with the premises, and that they should remain permanent appendages to it as essential to its working. They therefore fall within the rule laid down by the Court in that case."

Mr. Justice Mellor.—You see that case was referring to the Staffordshire Railway Company's case.

Mr. Edwards.—Yes it deals with those two cases, and I quite admit dealing with a railway or a dock where, if these things did not form part, it would not be a railway or a dock at all, all those must be rated. But what the Lord Chief Justice says is, "If the company desired to abandon this undertaking and to let the gas works to another company, or to any individual, what the lessee would propose to pay rent for would not be land independent of all these articles, all of them essential to the manufacture of gas, namely—the retorts, purifiers, gas-holders, are all essential to the using and occupying these premises as gas works, as any other thing that can possibly be suggested, however permanently attached to the freehold. They seem, therefore, clearly to come within the principle laid down in that case."

Mr. Justice Lush.—Now a gas-holder is not fixed to the premises at all, otherwise than by the chain and the pulley; I presume you may with very little trouble take out one and put in another. A gas holder there is deemed to be a fixture for the purpose of increasing the rateable value.

Mr. Edwards.—It is not the fixing, as Mr. Justice Blackburn points out in a later case, there may be plenty of fixtures rateable, resting of their own weight, if the intention with which they are put there has been the intention to increase the value.

Mr. Justice Lush.—Will you point out everything in the description you have read which is not applicable to these machines in that judgment. It appears to me that that judgment as aptly describes the punching machines as it described the apparatus there.

Mr. Edwards.—A little different principle is applied there, there we may cease to punch with these particular machines however valuable.

Mr. Justice Lush.—As long as you do punch with them there they are.

Mr. Edwards.—Let us look at what your Lordship's view would be. Take looms, which are all let into a stone floor and fixed there, so far as can be, and can hardly be taken away except by great exertion, all these have been always held to be not the subject of rating. The tenant takes a mill, fills it with looms and fixes them to the floor, but certainly it has been decided over and over again that

such fixtures which are put there for their being better worked are not rateable.

Mr. Justice Mellor.—For better use as chattels.

Mr. Justice Lush.—That is it.

Mr. Edwards.—I quite agree; and the finding in the present case shews conclusively these machines were fixed there as chattels for the purpose of working.

The Lord Chief Justice.—They might have constructed them so broad on the base as to stand on their own bases.

Mr. Edwards.—And they have rated things resting on their own weight on the floor and not fixed with a single peg.

The Lord Chief Justice.—However supposing the floor securely fixed, still, if the machine is used without any attachment to the soil, it helps you longer in your argument that the mere attachment will not make it part, being for the purpose of steadying it and giving it stability.

Mr. Edwards.—Yes; Mr. Justice Lush says in one of the cases that, putting it that, it was the intention of these machines, not to benefit the structure, but to bring them to a place where they could be steadied and so worked; some of these machines were outside in the yard resting on their own weight on the solid ground. I see paragraphs 26 and 27 bring it entirely within the cases which say chattels, however heavy, complicated, and costly, which are only attached to the soil for the purpose of being better worked, are not the subject of rating at all. "In the above description, where machines are spoken of as being bolted to the foundations, or to the walls, roofs, columns, or pillars of the buildings, such machinery could not be taken to pieces and removed without the nuts of such bolts being unscrewed, or such bolts being extracted; but, except removing the bolts the whole of the machinery could be removed without any disturbance or injury to the freehold, and when removed might be used in and are suitable to be used in any other similar mill or manufactory."

Mr. Justice Mellor.—They would give additional value to any other mill which used them.

Mr. Edwards.—Of course there is more furniture in one house than in another, but however costly it may be, the same house is rated in the same way, if only chair, table, and bed be there. Sometimes I have seen heavy dining-room or billiard-room tables screwed

down, but it does not make the billiard-table part of the ordinary value of the house.

Mr. Justice Mellor.—There it is to steady it as a billiard-table.

Mr. Edwards.—There is no doubt what the law is with respect to such questions, but referring to the Queen *v.* Halstead, 31st Justice of the Peace, I will read from the 4th paragraph to see what machines were proposed to be rated.

Mr. Justice Mellor.—You have a longer report in Browne's book on rating.

Mr. Edwards.—Yes, he seems to have had the original report of the judgment, and the 4th paragraph states this:—"Many of these machines are of considerable size, some as long as fifty or sixty feet and three or four feet wide. They are similar to those ordinarily used in silk throwing and weaving factories, and are fastened to the floors on which they respectively stand by screws passing through holes in the feet of the machines. Such fastenings are for the sole purpose of steadying," and so forth. Then the Lord Chief Justice gives judgment that these machines are chattels.

Mr. Justice Lush.—Certainly, they never ceased to be chattels any more than a chimney-glass fastened over a fire-place ceases to be a chattel.

Mr. Edwards.—Is it to be said that the distinction rests on the size or the extent of its fastening? It is what your Lordship said in the case of Chidley *v.* the Churchwardens of West Ham, 32nd Law Times, page 486. There your Lordship and Mr. Justice Blackburn gave judgment. I will read the note, and it seems very accurately to describe the case:—"The premises of a distillery contained tanks which formed the roofs of rooms and houses, boiling tanks and mash tuns lying on brick piers against the walls, which formed the floors of some of the rooms, and were connected by pipes to other houses, reservoirs, and other articles necessary for the process of distilling. They were all heavy, and either untouched except by the communicating pipes to the walls or piers upon which they stood, or fastened only by screws for the purpose of being steadied. Each was to be bought and sold as a separate article, and if all were removed, the premises might be used for other manufacturing purposes. Held that these articles were not fixtures, and could not be properly rated in the assessment of the premises to the poor rate." That is on all fours with the considered

judgment of the Court in the case I last cited. May I read what the Lord Chief Justice said in the Halstead case referring to the question:—"I consider that the recent cases have established this, that if you have things that are only so annexed to the freehold as that they still retain their character of chattels, and do not become so affixed to the freehold as to become part and parcel of it, you may in assessing the rateable value of the building take them into account, provided always that they have been attached to the building with the intention that the attachment should be a permanent one, and under such circumstances as that upon a demise of the building, that the chattels in question connected with the building would pass with it. Such was the case of the gas works. Such was the case of a certain portion of the articles referred to in the case of the Queen *v.* the North Staffordshire Railway Company." Then Mr. Justice Blackburn says:—"I am quite of the same opinion. In taking that view, I will only add that Vice-Chancellor Wood, in the case he decided, seems to have decided it perfectly right and perfectly consistent with the case of Hellawell *v.* Eastwood, except that he seems not to have been aware that you cannot distrain the tenant's fixtures, although he has the right to remove them, and he seems to have thought he was deciding against Hellawell *v.* Eastwood, when he was in fact deciding with it;" and Mr. Justice Shee was of the same opinion.

Mr. Justic Lush.—I always think that a very good test is the one stated by the Lord Chief Justice in the case as reported here. The question is whether the chattels are so fixed to the freehold as, that on demise, they would pass with the property. Now the question is whether, if Messrs. Laing demised the building with the appurtenances and nothing more, you would say these things would not pass.

Mr. Edwards.—I think not.

The Lord Chief Justice.—So that after granting a lease of the shipyard, with the buildings and appurtenances, they might remove all those punching machines out of the way.

Mr. Edwards.—Yes.

Mr. Justice Lush.—I use the word "appurtenances."

Mr. Edwards.—I do not think "appurtenances" would mean necessarily a loom or turning lathe.

Mr. Justice Lush.—No, no chattel would pass.

Mr. Edwards.—No chattel would pass whether fixed or unfixed.

Mr. Justice Lush.—No loose tools.

Mr. Edwards.—No loose tools.

Mr. Justice Lush.—A lease of the ship-yard as it is nothing more, not saying a word about engines, tools or punching machines.

Mr. Edwards.—I should not like to hang the decision of the question of rateability, or the decision of whether or no some of these things might not pass by demise, because in recent years there have been decisions where such things as are removable, have been held to pass Longbotham *v.* Berry.

Mr. Justice Lush.—That is a mortgage, I am speaking of a lease.

Mr. Edwards.—The case in the 10th House of Lords would apply even to that.

Mr. Justice Lush.—It may be that there are other considerations affecting a mortgage.

Mr. Edwards.—Yes, I should not like to rest the question of the rateability of fixed chattels on this.

Mr. Justice Lush.—I think you will find that is what the Lord Chief Justice puts as it is here, and I think you will find he is right in saying, I consider that recent cases have established this, that if you have things so annexed to the freehold as that they still retain their character of chattels, and do not become so affixed to the freehold as to become part and parcel of it, you may in assessing the rateable value of the building, take them into account, provided always that they have been attached to the building with the intention that the attachment should be a permanent one, and under such circumstances as that upon a demise of the building, that the chattels in question connected with the building would pass with it. A lease of a house for example, would pass all the stoves in it.

Mr. Edwards.—Clearly.

Mr. Justice Lush.—It would not pass a looking glass fixed to the wall over the stove.

Mr. Edwards.—Probably not.

Mr. Justice Lush.—Nor a carpet, though nailed down to the ground.

Mr. Edwards.—Nor a turning lathe, however heavy or firmly fixed. What Mr. Justice Blackburn says in the judgment, which your Lordship was a party, in Chidley *v.* West Ham is?—"Perhaps the true rule is that articles not otherwise attached to the land than by their own

weight, are not to be considered part of the land, unless the circumstances are such as to show that they were intended to be part of the land." Showing that the intention with which these things were put down, was not that they should become part of the shipbuilding yard.

Mr. Justice Lush.—Yes, it says they were intended to be permanently used.

Mr. Edwards.—I think that must be read with the 26th and 27th paragraphs.

Mr. Justice Lush.—Yes, after the description of how they are to be fixed, the 29th paragraph states the purpose:—"The whole of the buildings, foundations, engines, shaftings and other machinery included in the Appendix, and hereinbefore referred to, were intended to be permanently used in the shipbuilding and repairing yard, the subject of the assessment."

Mr. Edwards.—The meaning of that is this. The tenant or person was to use them for that purpose, but that would apply to every man who takes a lease of a factory, and fills it with looms, he intends to use them during the terms of his lease for the purposes of his trade in that mill. So here these machines which are enumerated, and one would hardly say that those which were not fixed to the ground, but were resting by their own weight, were put there permanently.

Mr. Justice Lush.—I am not dealing with these, but with machines which require a foundation to be made for them expressly, which are let into the freehold, and put there for the permanent use in connection with the trade.

Mr. Edwards.—The foundations I admit of the adjuncts up to the iron machine itself may be the subject of rating, and may enhance the value of the mill, but what I say is this, that if you put up a machine costing £20,000 upon an iron bed, and only for the purpose of making it steady, and put four screws, that £20,000 cannot be taken as enhancing the value of the property, and I must contend that no case has ever been decided that such articles in any way enhanced the value. They must form, and be intended to form part of the permanent structure of the premises. I submit these cases, especially the two I have just cited, the Queen *v.* Halstead, and the one your Lordship cited of the pump described in the case, which one would think very strong to show it was attached to the freehold.

Mr. Justice Lush.—What sort of pump was it?

Mr. Edwards.—There is also a force pump worked by the same

engine, used for supplying water to the steam boilers. Such pump is connected on the one side by means of a pipe passing under ground to a water reservoir in the grounds, and on the other by a pipe passing through the walls of the building into the steam boiler house, and connected with the steam boilers. Your Lordship says about that:—"These cases are always difficult owing to the things being open almost and yet not entirely fixtures, still I think that none of those here described are fixtures. Looking at the 44th paragraph of the case it is admitted that these things are chattels, and are capable of being severed, and sold again as chattels. I do not think from the descriptions given of the works, that they are so annexed as to become part of the soil. As to the pump, I think it is not fixed, and that as it is capable of being sold again, and is fixed merely to steady it, it cannot be treated merely as a fixture. As to the tanks on the roof they are not fixtures, and though it is said they form the roof itself of the building, still all that this means is, that while they are there no other roof is required, that circumstance does not make them so annexed as to cease to be chattels." Another instance is on page 6, paragraph 14.

Mr. Justice Lush.—Then you pass over the planing, boring and slotting machine.

Mr. Edwards.—I ought not to pass over the "planing, boring and slotting machine, weighing 58½ tons, driven by its own engine. It is bolted to a cast-iron foundation plate. This foundation plate rests on a concrete bed sunk into the ground, but is not fixed thereto by any fastening." There is a machine, simply a heavy weight brought in.

Mr. Justice Lush.—Bolted to a cast-iron foundation plate that is part of itself.

Mr. Edwards.—Part of the thing on which it stands.

Mr. Justice Lush.—Rests on a concrete bed sunk into the ground, not fixed at all.

Mr. Edwards.—Then "a rivetting machine weighing without boiler 18¾ tons, consisting of cast-iron frames and holder up; the whole is bolted down to a concrete or brick foundation." Of course the object of that is to keep the rivetting machine perfectly steady. Then "three punching and shearing machines. The first and second of which weighing 14 and 10 tons respectively, stand on wooden sleepers partially sunk in the ground. The first is but the second is not fixed

thereto. The third stands upon, and is bolted to a wooden frame built into brickwork, forming a kind of pit, the machine itself being partially sunk in the ground. It is driven by a cross shaft from the counter shaft."

Mr. Justice Lush.—What do you say to that?

Mr. Edwards.—It is simply fixed there for the purpose of being used as a punching and shearing machine, and the intention was not in anyway to make it part of the hereditaments. Then the lathes are not attached at all. "The foundation plate is fixed to a concrete foundation, the second is bolted to stone blocks partially sunk in the ground. The third is partially imbedded in concrete, and the fourth rests on blocks of stone partially sunk in the ground, but is not attached thereto." All for the purpose of steadying them. Then "three drilling machines; the first is bolted to a stone block sunk into the floor, the second to a cast-iron column of the roof, the third to the cast-iron bed of one of the lathes." Then the saw benches.

Mr. Justice Lush.—I do not know whether you admit these or dispute them?

Mr. Edwards.—I say they are obviously chattels.

Mr. Justice Lush.—You say that 13 is a chattel too?

Mr. Edwards.—That is a chattel too. They are fixed for the purpose of steadying them.

Mr. Justice Lush.—Now 14?

Mr. Edwards.—I say the same with respect to 14. The foundation plate is bolted to a concrete foundation. With each of these paragraphs you have to read 26 and 27 as part of the description of the intention with which they were so fixed.

Mr. Justice Lush.—That is you may unbolt and take it away. You must read the 29th also.

Mr. Edwards.—I admit all these concrete foundations, those stone beds no doubt are fixed as to be part of the whole structure. What I object to, is rating the machine which you only put upon the foundations for the purpose of steadying it.

Mr. Justice Lush.—For the very sustaining of which they were built.

Mr. Edwards.—For the very sustaining of which they were built. The drilling machines I say the same of.

Mr. Justice Lush.—The drilling machines you dispute?

Mr. Edwards.—Yes.

Mr. Justice Lush.—"Bolted to a stone block sunk into the floor the second to a cast-iron column of the roof."

Mr Edwards.—Certainly, I say that that is not a fixture.

Mr. Justice Lush.—Then you say that is not rateable.

Mr. Edwards.—I say that is not rateable. Now the saw benches. "A saw bench and hand saw; the first is mounted upon a wooden frame partially sunk into the ground, the second is fixed to the wooden floor of the shop." Your Lordship has seen a joiners' shop, a saw bench fixed to the floor. However valuable the bench, the shop does not let for a penny more because the saw bench is fixed to the floor. Then the steam hammer. There is a picture of that, and what is said about that is, it is bolted to a foundation sunk in the ground, I say rate the foundation but do not rate the machine. Then the shear legs. If your Lordship will look at that photograph (handing it up) they have rated the long shear legs. "The shear legs which with their engines weigh 40 tons, and are constructed to lift 80 tons, are bolted to a stone foundation in the quay wall, the back leg is traversed by a screw carried in a cast-iron frame, which is bolted to a concrete foundation sunk in the ground." I say that is simply bolted for the purpose of supporting it. I have just the same observation to make about the succeeding machines which are only fixed for their more convenient use.

Mr. Justice Lush.—You say the same of all the rest.

Mr. Edwards.—Of all. Taking the weighing machine, I am not so confident of that. It is really part of the yard. "Two weighing machines, the first fixed in masonry sunk in the ground, with brick house attached. The second is mounted on wheels." With regard to the first perhaps it might be more doubtful than with regard to the second. Then "a smiths' shop containing 12 fire places, with brick hearths partially sunk in the ground, and 3 furnaces constructed of brick-work also partially sunk in the ground, and tied with iron tie-rods, and cast-iron plates."

Mr. Justice Lush.—What do you admit? Do you admit the weighing machine.

Mr. Edwards.—Yes, I should, and I do not know that I should not admit the smiths' shop, on the whole I think the chief value is the structure of the brick-work furnaces. Then the water tanks. I say those come within the case last-mentioned.

Mr. Justice Lush.—Water tanks you dispute.

Mr. Edwards.—Yes, and with great confidence dispute the grindstone, surely in a shop for the purpose of sharpening the mens' tools, it could hardly be supposed to be part of the freehold. Your Lordship will see it is merely a chattel, it must have some support.

Mr. Justice Mellor.—It is clear that a grindstone is merely a chattel, but this is a peculiar grindstone.

Mr. Justice Lush.—The stones of water-mills are chattels, but you say they are not to be taken into account in valuing the mill.

Mr. Edwards.—If they are away you could not rate it as a mill at all.

Mr. Justice Lush.—Nor would this be a ship-yard if these were away.

Mr. Edwards.—If a mere piece of iron of so many tons it would not be rateable.

Mr. Justice Lush.—I take the water-mill which has its wheel and stones, and all the apparatus for grinding; do you say because the stones may be taken away as they are to be ground up again, they would not be rateable?

Mr. Edwards.—No, not any more than I should say taking a brick out and putting in a new one.

Mr. Justice Lush.—What is the difference between that, and these grindstones?

Mr. Edwards.—Because a grindstone may cease to be used, it is not part of the ground. It comes upon the ground as an instrument of trade, like a man's hammer.

The Lord Chief Justice.—Every machine is a substitute for hand labour. You may make a machine a part of the freehold, then it is in vain to say it is a substitute for a hand instrument, like a hammer or saw.

Mr. Edwards.—Is not the intention with which the things are put there to be taken into account?

The Lord Chief Justice.—If you make intention the criterion, that is if you intend that they shall remain there permanently, and it is not in your present contemplation to take anything away.

Mr. Edwards.—Then that must include all machines put down for the purpose of working. There is no escape from the conclusion that the machinery if fixed, and intended to be permanently used, must be rated. It would be a most novel doctrine.

The Lord Chief Justice.—What I think a great pity is it was not adopted long ago, you establish a given state of things by which the

freehold is rendered much more valuable than it was before. Granted, you can alter that state of things by removing those things which have brought the freehold to its present condition, and good, that when you do so the value is diminished, and the rate accordingly; but yet so long as you keep these things there to form for the present a permanent part of the thing, whatever it may be, a gas works, a ship-yard, a manufactory, as long as you keep the thing in its existing condition it is reasonable, inasmuch as you increase the value of the freehold that you should pay for it.

Mr. Edwards.—Of course, whatever is reasonable or proper. It is certainly new. It might be very proper to take that view, but all the cases have been as conclusive against the fact of fixing for use during the term, being any test of rating value at all. I admit that like a gas work or railway where it is the essence of the structure that certain fixed chattels should be there, and those away it would cease to exist, but then they ought to be rated; but where you bring tools, however heavy, on the premises and fix them for further strength, if you fix for working that tool which you can sell or work elsewhere, they are no more a part of the freehold, the subject of the rate, than chairs and tables are. I do not know that I can say more.

Mr. Justice Lush.—Does this exhaust the list?

Mr. Edwards.—I have to deal with the first one or two. I make the same observation with regard to the boiler, shafting, and engines, they are simply chattels which can be used elsewhere, but are fixed permanently in the ground for trade purposes.

Mr. Justice Lush.—Then you admit none of the machines in 21 and the smiths' shop?

Mr. Edwards.—Yes.

Mr. Justice Lush.—All the rest are chattels.

Mr. Edwards.—Not fixed at all. No question about them, but only fixed as the 27th paragraph says.

Mr. Justice Lush.—Not rateable.

Mr. Edwards.—Not rateable.

Mr. Herschell.—My Lords, I venture to think as regards the main part of my friend's contention, the authorities are conclusive against him. My friend has argued although you may rate concrete beds or brick walls, which become part of the freehold, yet the machinery attached to those, which can be removed without the walls themselves, are chattels, and you are not to take them into account. I

say there is authority to the contrary, and I begin with what is laid down in the Queen *v.* the Southampton Dock Company in the 14th Queen's Bench, page 587. The marginal note on this point is this:—"Cranes, steam-engines, shears, and other heavy machinery, attached to the freehold and essential to the business, but capable of being detached as easily and with as little injury to the freehold as other fixtures put up for the purpose of the tenants' trade, and usually valued as between incoming and outgoing tenant.—Held not an allowable deduction." That being a dock company, this case states, we have graving docks for the repair and building of ships and shipping. Our case, so far, is very similar to that of the dock company. We need shears for the purpose that they do; we could not carry on the business of repairing ships without them. They are just as much part of our business as theirs, and are fixed in the same way. Now here is the judgment:—"The Sessions did find as a fact that these fixtures, worth £6,450 to an incoming tenant, although fixed to the freehold, are capable of being detached from the freehold as easily and with as little injury to it as other fixtures put up for the purposes of the tenant, and usually valued as between an incoming and outgoing tenant. But this is a rate upon buildings to which machinery is attached for the purposes of trade, and it has been decided that such real property ought to be assessed according to its existing value as combined with the machinery, without considering whether the machinery be real or personal property, or whether it be liable or not to distress or seizure under a writ of *fi-fa*, or whether it would go to the heir or executor, or at the expiration of a lease, to the landlord or tenant." Without considering any of those things, if in any way attached to the freehold, though not properly speaking a fixture, it is to be taken into account in assessing the freehold to the rate. Of course half my friend's case is tenant's fixtures or chattels; but it is said you cannot look at that, that if they be such things as could be seized under a *fi-fa* or liable to distress, you do not take that into account.

Mr. Justice Lush.—A tenant who has put the stoves into a house, if he has paid for them or put them in, may remove them during his term; but if he does not, they are fixtures.

Mr. Herschell.—Yes. Now that is laid down in that case, and as pointed out in many things of the same nature, and the same purposes as the things in question. My friend says you

might remove them elsewhere, but a man cannot carry on the business of a shipbuilder without shears or cranes. Now I come to the case of the Queen *v.* the North Staffordshire Railway Company, in the 34th Law Journal, Magistrates' Cases, page 68. There, in addition to the ordinary stock of the railway company, the company had provided "cranes, weighing-machines, stationary steam-engines, lathes, electric telegraph and apparatus, office and station furniture, and gas works;"—just as these are. "Held, that in rating the company a deduction should be allowed in respect of such of the above things as were movable, such as office and station furniture; that none should be allowed in respect of such as were attached to the freehold." Then it goes on with the gas works, and this is how the question is dealt with,—"The second question is whether the company are entitled to a deduction in respect of various articles therein specified, being things necessary for carrying on the business of the company. The articles to which such a question may have reference may be divided into three classes:—first, things movable, such as office and station furniture; secondly, things so attached to the freehold as to become part of it; and thirdly, things which, though capable of being removed, are yet so far attached as that it is intended that they shall remain permanently connected with the railway or the premises used with it, and remain permanent appendages to it, as essential to its working. It is clear that in respect of the first class of articles a deduction should be allowed. It is equally clear that no deduction should be allowed as to the second. As to the third, the question is finally settled by the decision of this Court in the case of the Queen *v.* the Southampton Dock Company." Now my friend says, that a railway company could not carry on its business without a crane as this shipbuilder could. A crane is no part of the railway itself, only you want it to lift heavy things into the trucks and out of them, just as this man wants to lift the things he is repairing. They are only essential to the business in one case exactly in the same sense as they are essential to the business in the other. What is the distinction between cranes and weighing-machines and lathes in this case, and in the case of the Queen *v.* the North Staffordshire Railway Company? I have been unable to hear any distinction pointed out by my friend between them. The test is, are they not fixtures, because it is admitted they are to be taken into account although not fixtures. If they are fixtures, it

is clear; but if they are not fixtures, the question is whether "so far attached as that it is intended that they shall remain permanently connected with the railway or the premises connected with it, and remain permanent appendages to it, as essential to its working." That is the test. Now of course it would not be a shipbuilding yard at all, or a graving-dock, unless you had your shears, or there were all the other things mentioned. The whole premises are rated. What would be the value of it if it had not the shears and things necessary? Probably it would make the piece of land worthless by making this great hole in it, unless you had the appliances con nected with it. Therefore no man would let, or think of taking, the graving-dock except as a shipbuilding yard and the rest of the premises. Then, in the Queen *v.* Lee, that same view is followed out. That does not profess to give any distinction to those cases, but to follow them, and I could give you many things, for example, the great gasometers or gas-holders, they might be lifted out of the way of the pulleys that fasten them to the ground and be taken away and used elsewhere, and purifiers are small things, and might be easily removed, but they are part of the machinery attached to the land for the purpose of carrying on the business.

Mr Justice Lush.—The structure intended to receive the gas-holder would not be complete without it.

Mr. Herschell.—No.

Mr. Justice Lush.—Nor would these foundations be of any use without the machinery.

Mr. Herschell.—They are erected for the very purpose, and would be useless without it, and it seems to me this case is a distinct authority in our favour, because every argument my friend uses might be used there. He says that they are chattels removable, and you could sell them separately. So you might, if people were going to set up gas works, they might buy them; but so long as they are *in situ*, and intended to be used, you are to take it as a gas premises fitted up with every necessary appliance. So here is a ship-yard fitted up with every necessary appliance as a ship-yard. Now as to the case on which my friend relies, it was this, differing from those to which I have called attention, though he did not pretend to dissent or differ from any of the cases I have referred to, and I say that they expressly govern many of the particulars of this case. Now Chidley's case is a somewhat peculiar one. The question

asked of the Sessions was, whether certain pieces of machinery were rateable, and of course in all these cases, as pointed out by Mr. Justice Blackburn in the judgment, two questions may arise. If you put a piece of machinery, so fixed to the freehold as to be part of the freehold itself, you may say in that sense that that thing is rateable. It is freehold, and you are rating the freehold, and it is part of the freehold; but if they are not so fixed as to be part of the freehold, then they are not rateable at all; but still, though not rateable as part of the freehold, they may well be taken into consideration in enhancing the value.

The Lord Chief Justice.—That is the question.

Mr. Herschell.—That is the distinction between the Staffordshire case and the Southampton Docks case; because it is quite clear they could not become part of the freehold, when they say, even though it may be liable to a writ of *fi-fa* or distress, still, it is to be taken into account in rating; and therefore it could not have been speaking of fixtures that had become part of the freehold, and in their judgment indeed they say they had not become part of the freehold.

Mr. Justice Lush.—Not for my purpose.

Mr. Herschell.—I should rather gather for no purpose, had they so become part of the freehold; because if they had become part at all, I take it you could not levy on them by *fi-fa*.

Mr. Justice Lush.—We have only one word to denote a great variety of elements. A thing may be a fixture for one purpose and not a fixture for another purpose. What is meant in reference to cases of this description is this: I have always understood that if the thing is so attached to the freehold as to be a permanent thing, so long as it remains there, and is essential to the use of the building, the purpose for which it is used, it is then rateable; that is, it ought to be taken into account in estimating the value. But looms have been considered as furniture.

Mr. Herschell.—I am coming to that, but in Chidley *v.* West Ham, the Sessions there asked the question—whether these things were rateable; the decision of the Court was—they are not; they have not become part of the freehold so as to be themselves rateable, and Mr. Justice Blackburn says, "I am not prepared to say that the various articles described in the present case may not be taken into account as enhancing the value of the premises." Therefore, when my friend quotes this as a decision in his favour, Mr. Justice

Blackburn expressly declined to decide that these things must not be taken into account as enhancing the rateable value.

Mr. Justice Lush.—It is rather a question whether that is the meaning of it. I do not know of a case, nor do I think it possible that a steam-engine in a factory, so attached as to be firm in the ground, could be so rated except as a factory.

Mr. Justice Mellor.—Or becomes part of it.

Mr. Justice Lush.—Or becomes part of it.

Mr. Herschell.—A man might be owner of that piece of ground.

Mr. Justice Lush.—If there was a separate occupation, it would be a different thing, but if it is in the hands of the occupier of the whole establishment you would not divide it into fragments.

Mr. Herschell.—No, rate it as a whole.

Mr. Justice Mellor.—Like building a house without a chimney-stack. Then, if you add a chimney-stack, it is part of the house. You cannot separate it.

Mr. Herschell.—If separately occupied, it would be of itself rateable, because it has actually become part of the freehold, and there you have this piece of land.

Mr. Justice Mellor.—If you let it off to a separate occupier you have a steam-engine and cease to want it, and you let it to some one else who wants to use it for some specific purpose of his own. They are separate, but as long as you occupy it as part of the building, you can only rate it with the building.

Mr. Herschell.—Quite so.

Mr. Justice Lush.—Then the separate occupier would have to pay a larger sum. His amount of assessment would be increased by having that steam-engine.

Mr. Herschell.—Yes; but according to the view of Mr. Justice Blackburn there are certain things which could not be fixtures. He puts some things which are in no way attached, but yet may be taken into account as enhancing the rateable value. He says, "Perhaps the true rule is that articles not otherwise attached to the land than by their own weight;" so that he considers even those in some cases would be taken into account. Perhaps the true rule is that articles not otherwise attached to the land than by their own weight are not to be considered as part of the land, unless the circumstances are such as to show that they were intended to be part of the land, the onus of showing that they were so intended lying on

those who assert that they have ceased to be chattels, and that on the contrary, an article which is affixed to the land, even slightly, is to be considered as part of the land, unless the circumstances are such as to show that it was intended all along to continue a chattel, the onus of shewing that it was so intended lying on those who contend that it is a chattel. This last proposition seems to be, in effect, the basis of the judgment delivered by Maule (Justice) in Wild *v.* Waters, 16th Common Bench, page 637. This, however, only removes the difficulty one step, for it still remains a question in each step whether the circumstances are sufficient to satisfy the onus in some cases, such as the anchor of the ship, or the ordinary instance given of a carpet nailed to the floor of a room. The nature of the thing sufficiently shows it is only fastened as a chattel, temporarily, and not affixed permanently, as a part of the land. But ordinary trade or tenant fixtures, which are put up with the intention that they should be removed by the tenant (and so are put up for a purpose in one sense only temporary, and certainly not for the purpose of improving the reversionary interest of the landlord), have always been considered as part of the land, though severable by the tenant. In most, if not all, of such cases, the reason why the articles are considered fixtures is probably that indicated by Wood (Vice-Chancellor) in Boyd *v.* Shorrocks, that the tenant indicates by the mode in which he puts them up that he regards them as attached to the property during his interest in the property. I am not prepared to say, "This is an important passage," that the various articles described in the present case may not be taken into account as enhancing the value of the premises, but that question is not asked, and we are only to say whether the things are rateable. So that really this is no decision against me at all. Mr. Justice Blackburn rather indicates the view that it may be well that they are all to be taken into consideration in enhancing the rateable value. He begins by saying, "In this case, which is perhaps not so stated as to bring out the precise point intended to be raised, the Court is asked if certain articles described are liable to be rated." And then he goes into the reasons why they are not; so that that is no authority against me on the question left to the Court now. It gets rid of the whole of the argument which is rested on the case of Chidley *v.* West Ham. Now the only case on which my friend finds he can rely at all is the case of the looms.

All the other cases are distinctly in my favour, and the language used by Mr. Justice Blackburn, in Chidley *v.* West Ham, is in my favour. Now in the looms case the Court came to the conclusion that these things were not intended to be permanently used with the buildings, that it was not a building intended to be fitted up exclusively as a silk mill, or for use with those particular mills, but that they retained their character still as chattels, although nailed to the floor, no difference from a carpet nailed to the ground. I am talking of the Halstead case, where it was held that these looms were not to be taken into account, inasmuch as they still kept their character as chattels, and the Court came to the conclusion that they were intended to be used merely as chattels, but not as part of the premises and business there carried on, and it was on that conclusion of fact, right or wrong, that they based their judgment affirming the principle of all the previous cases, not dissenting from anything laid down there, but only coming to that conclusion with regard to these particular things.

Mr. Justice Lush.—I suppose the attachment to the floor is very trifling.

Mr. Herschell.—Only a nail in the middle of the room. It is said if the frames had been made a little heavier, they might perfectly well remain without attachment at all, and it was found they were only attached for the purpose of steadying them.

Mr. Edwards.—So it is here.

Mr. Herschell.—No, they are not merely attached for the purpose of steadying them.

Mr. Edwards.—They are fastened with screws.

Mr. Herschell.—They are a sort of machinery which you can only use when fastened. I say the things themselves are exactly similar things to those which it is said must be taken into account in the Southampton Dock and Staffordshire Railway cases, and fixed in the same way, and used in the same way, and I defy my friend to point out the distinction between them, but all he can rely on is the case of the looms as in any way infringing these rules laid down. I should say I am entitled to rely on those cases as distinct authorities, because we have the very things, looms, cranes, weighing machines, engines, lathes, which, are the very things here, and those are always taken into account. Why should they not be here? I assume the decision can only be reconciled with previous cases on the ground that the

Court thought the looms temporarily there as chattels, and were not satisfied with the fact that they were intended to be permanently used as part of the business premises, which is found as a fact in the present case, because it is found they were intended so to be used. I say taking that finding and the other cases, it is impossible to distinguish the present case from them. One case which has not been alluded to, and which is important as showing the view taken in these rating cases is the Queen *v.* Castleton. It was rather a curious case. A cotton mill which had a quantity of machinery in it, the ordinary machinery for cotton mills, and it was rated. The question was should it be rated as a mill, for though a mill it had been during the American war idle on account of the war, and the machinery had been merely kept in repair, but nothing done. It was held that although when a going concern you were to rate it as a going mill, yet when it was not going, and was of no use except being used as a warehouse for machinery, you were only to rate it as a warehouse.

Mr. Justice Lush.—It was found as a fact there that no one could be found to take it as a mill. Its letable value was therefore nothing more than that of a warehouse.

Mr. Herschell.—Yes, but if some one could be found, it is to be rated as a mill, though it gets its character from the machinery which we know is ordinarily in a cotton mill. There is another case of the Queen *v.* Brinjes. I have only got it in the *Justice of the Peace*, vol. 35th, page 456. "B was the occupier of premises consisting of buildings and plant, for reburning animal charcoal. Over each furnace were apertures in the brickwork to receive cylinders which revolved, and deposited charcoal received from a shoot into coolers, and thence into trucks on wheels, which were placed below the coolers. The cylinders and coolers were not fastened to any part of the premises, but were essential parts of the machinery. It was argued that we could take those chattels and cylinders away, and use them as chattels. Held that as the cylinders and coolers were essential parts of the machinery, and intended to be permanently used as such, they were part of the rateable premises." Then there is the case of the Great Western Railway Co. and the Melksham Union. There was a railway. (It was after the Halstead case,) and they sought, on the authority of that case, to say "we can take away those rails; they are so fitted without interfering the least with the sleepers or the land, we can remove them or sell them as chattels. Therefore the fixture

there is only to keep them steady in their places, and therefore like the looms in the Halstead case. Held, nevertheless, that the case was not within the Queen *v.* Halstead but the older authorities, and that they were to be taken into account because they were intended to be permanently used as part of the railway."

Mr. Justice Lush.—Until worn out?

Mr. Herschell.—Until worn out.

Mr. Justice Lush.—Was I in that case?

Mr. Webster.—I was in the case, and your Lordship was party to the judgment. Mr. Field argued it for the company against Mr. Kingdom.

Mr. Justice Lush.—The same may be said of every rail upon every railway.

Mr. Herschell.—I submit this case is really concluded by these later authorities, uninterfered with by the Queen *v.* Halstead, and as all these things are put there for the purpose of being permanently used as part of the ship-yard and graving-dock, within all the authorities are to be taken into account.

Mr. Edwards.—With reference to the last case my friend cited, the ground of the judgment was, "that as the cylinders and coolers were essential parts of the machinery, and intended to be permanently used as such, they were part of the rateable premises." That clearly cannot apply to a turning lathe.

The Lord Chief Justice.—Not if an essential part of the premises for which the premises are used. The analogy seems to me to be complete. Whatever the piece of machinery is, for the purpose for which the freehold is used, why should it not be considered?

Mr. Edwards.—You must go to the lathe. Take the Halstead case. No building would be erected except for the use to be made of the machinery. Why should not the looms be rated?

The Lord Chief Justice.—Because the looms there were considered I am not quite so sure whether that decision is right, but it proceeded on the ground where the attachment was so slight, it was no more or less than machinery which could be worked by hand.

Mr. Justice Mellor.—Immediately you apply the mills or looms to different purposes, you put in different machines at once. It may be a question how far that decision as a matter of rating was right, I am inclined to think it was.

The Lord Chief Justice.—At all events it proceeded upon this,

they are merely a substitute for hand looms. If you fasten it against a wall you may take it down again.

Mr. Edwards.—Of course I am not arguing the rating of everything that makes the freehold, I am confining my argument to the common ground of general practice which has prevailed according to the view the public have taken of the law with respect to this class of articles. I say so with some experience of manufacturing towns, and having had a great deal to do with rating, it is a novelty to hear of those machines being treated however heavy, and however much fixed for steadiness as part of a subject for rating.

Mr. Justice Lush.—Is that so.

Mr. Edwards.—It is.

Mr. Justice Lush.—Not in my experience of cases that come before us.

Mr. Edwards.—Take a mill for that heavy plant and machinery, many of the frames weighing 20 or 30 tons, soldered into the stones.

Mr. Justice Lush.—I should be very sorry to say off hand that they would not be taken into account in the particular case. The Court, rightly or wrongly, say rightly if you please,—the Court considered they had never lost their quality of movable chattels any more than a carpet pinned down, that is the principle, but if the chattel is so fixed that it loses its quality of a movable chattel, (and to ascertain that you must have regard to the mode of attachment, and the object of it) if put there fixed in such a way as to be used until worn out like a rail on the railway, and intended to be a permanent thing, why should not that be taken into account in estimating the rateable value.

Mr. Edwards.—There are two things to be said about railway cases. First, you get a hypothetical tenant by getting the income.

Mr. Justice Lush.—That does not touch this point.

Mr. Edwards.—It is very difficult to eliminate from a railway case what the value of the structure would be, because the value is arrived at by taking the net earnings from which certain deductions are made. In the Queen *v.* Lee these two cases were fully considered, and really considered in justice and reason, the true ground that these things were essential to the docks as docks, and to the railway as railway, and were not merely tools of trade however heavy the chattels brought on for the purpose of carrying on some occupation on the premises.

The Lord Chief Justice.—You could not use this as a shipbuilding yard without these things, they are essential to it.

Mr. Edwards.—Take this very lathe we are looking at, a large crank shaft lathe. Of course that might be used to plane plates for boilers.

The Lord Chief Justice.—Very true, but still you cannot build ships without it.

Mr. Edwards.—You might desire to take away one of these machines, and use it elsewhere.

The Lord Chief Justice.—In the meantime you have it affixed by some means or other to your freehold, and are absolutely using it as a subordinate instrument for the general purpose of your yard.

Mr. Edwards.—Can that depend on the fixing, because machines which steady themselves by their own weight might be said just in the same way to be essential to carrying on the business.

The Lord Chief Justice.—That is what occured to me just now. Then there you have a technical difficulty in your way even for temporary purposes, but if you chose to make them for the time being attached to the freehold, then happily the law can extend its clutches and catch you, and make you subject of the rate.

Mr. Edwards.—It is a fixed tool of trade, nothing more.

The Lord Chief Justice.—By which the value of your premises is so largely increased, that you ought to be made to contribute to the common burthen.

Mr. Justice Lush.—I do not know what machinery according to your argument would be taken into account in estimating the rateable value.

Mr. Edwards.—Take a factory, what is called landlord's shafting, is always recognised as part of the building, the even shafting, strapping, and cross bars, and second and third motion shaft are always looked upon as the tenants, because one is part of the building, and the other part of the machinery. I have called your Lordship's attention to all the decided cases. I have called your Lordship's attention particularly to two cases, I think those two last are in my favour, and are not in any way different from the principle of the Queen *v.* Lee where you cannot take up rails and have a railway. I may mention that the Queen *v.* Halstead in Mr. Browne's book is much fuller, and the whole judgment is given at page 383.

The Lord Chief Justice.—We will look into these authorities once more, and pass them in review.

Mr. Edwards.—If your Lordship pleases it is an important question.

The Lord Chief Justice.—It is.

Mr. Webster.—I may mention that we have arranged that each party is to pay his own costs in this case. It was for the opinion of the Court.

Judgment was delivered on the 24th January, 1878, by the Lord Chief Justice, who said:

This case was argued before my brothers Mellor and Lush and myself. It is an appeal against a rate for the relief of the poor, in which, in assessing the appellant's premises, the value thereof has been treated as enhanced by reason of extensive machinery attached to them for the business carried on by the appellant, which is that of building, repairing, and fitting out iron and wooden ships. For this purpose, the appellant is in the occupation of extensive premises, into and upon which the machinery in question, and which is of a ponderous character, is affixed. The law on the subject of rating with reference to premises on which machinery has been erected with a view to the use of such premises for the purpose of manufacture is settled by former decisions. In R. *v.* the Birmingham and Staffordshire Gas Light Company, 6 A. & E. 634, where a rate had been made under a local Act which required a valuation to be made periodically of all houses, &c., it was held that where steam-engines or other machines were affixed to the houses, the houses were rateable according to its value as increased by the machinery. In R. *v.* Guest, 7 A. & E. 951, it was held that in a rate upon buildings to which machinery is attached, the real property ought to be assessed according to its value as combined with the machinery, without regard to whether the machinery was real or personal property, so as to be liable to distress or seizure under a *fi. fa.*, or whether it would descend to the heir or executor, or would belong at the expiration of a lease to the landlord or the tenant. This rule was again affirmed in R. *v.* the Southampton Dock Company, in 14 A. & E. 557, in which it had been expressly found by the Sessions, that the fixtures in question, although attached to the freehold, were capable of being detached from it as easily and with as little injury to it as other fixtures put up for the trade of the tenant, and usually valued as between incoming and outgoing tenants. In the case of R. *v.* the North Staffordshire Railway Company, *Law Journal*, M. C. 71, it was held that things which, though capable of being removed, were yet so far attached to

the freehold that it is intended that they shall remain permanently connected with it, and shall remain permanent appendages to it, as essential to the purposes for which the premises are used, must be taken into account in estimating the rateable value of the premises. In R. *v.* Lee (Law Rep. 1 Q. B. 241), the principle was applied to the retorts, purifiers, gas-holders, steam-engines, boilers, and even pumps and exhausters on premises fitted up and used as a gas manufactory, as being essential to the working of the manufacture, and therefore as having been erected with the view of their remaining permanently attached to the premises, even though some of the machinery, such as pumps and exhausters, would have been removable as trade fixtures. Applying the rule established by these decisions to the present case, it appears to us, after having carefully considered the character of the machinery in question, that the whole of it, though some of it may be capable of being removed without injury to itself or the freehold, is essentially necessary to the shipbuilding business to which the appellant's premises are devoted, and must be taken to be intended to remain permanently attached to them, so long as those premises are applied to that present purpose. The case is consequently governed by the decisions which have been referred to, and our judgment must therefore be for the respondents.

In the High Court of Justice,
Queen's Bench Division.

IN THE MATTER OF AN APPEAL,

WHEREIN

JAMES LAING IS - - - - - - - *Appellant,*

AND

THE OVERSEERS OF THE POOR OF THE TOWNSHIP OF BISHOPWEARMOUTH AND THE ASSESSMENT COMMITTEE OF THE SUNDERLAND POOR LAW UNION, ARE - - - - - - - - *Respondents.*

APPENDIX TO SPECIAL CASE.

	See page		
CLASS 1.			*Boilers and Steam Pipes.*
	157	A.	Plain cylindrical boiler in masonry.
	158	B.	Cornish do. do.
	„	C.	Vertical do. not in masonry.
CLASS 2.			*Engines.*
	158	A.	Horizontal, on masonry.
	„	B.	Vertical, bolted to main wall.
	159	C.	Do. do. main columns.
	„	D.	Portable engine.
CLASS 3.			*Shafting.*
	159	A.	Bolted to main wall.
	160	B.	Carried by principals of roof.
	„	C.	Do. main columns.
	„	D.	Do. wrought-iron girders.

APPENDIX—*continued.*

CLASS 4.	See page		*Machines Driven by their own Special Engine.*
	160	A.	Bolted to wood sleepers.*
	161	B.	Not bolted to wood sleepers.
	„	C.	Bolted to concrete.
	„	D.	Not bolted to concrete.
	162	E.	Bolted to concrete.
CLASS 5.			*Machines Driven by Belt.*
	162	A.	Bolted to wood sleepers.*
	„	B.	Not bolted to wood sleepers.
	„	C.	Bolted, and stands in a pit.
	163	D.	Do. to concrete.
	„	E.	Do. to blocks of stone.
	„	F.	Not bolted, embedded in concrete.
	„	G.	Not bolted to blocks of stone.
	146	H.	Bolted to blocks of stone.
	„	I.	Do. to main column.
	„	J.	Do. to bed of another machine.
	„	K.	Not bolted, partially sunk.
	„	L.	Bolted to shop floor.
CLASS 6.			*Steam Hammer.*
	165	A.	Bolted to wood foundation.
CLASS 7.			*Cranes.*
			Steam Sheers.
	165	A.	Bolted to stone and concrete.
			Steam Crane.
	„	B.	Bolted to wood quay.
	„	C.	Portable steam crane.
	„	D.	Do. hand do.

* These machines, which are on wood sleepers, are attached to the freehold, in the same manner as railway sleepers, which were held to be substantially an addition to the freehold and must be regarded in the amount of the rate. Great Western Railway Co. *v.* Melksham Union, (Q. B.), 34—J. P., 692.

APPENDIX—*continued.*

			Cranes—continued.
CLASS 7.	See page		Hand Power Crane.
	166	E.	Bolted to main column.
	„	F.	Do. main wall.
	,	G.	Hand crane fixed in ground.
	„	H.	Goliath crane travelling on rails.
	„	I.	Overhead traverser.
CLASS 8.			*Pumps.*
	167	A.	Fixed in iron box, &c.
	„	B.	Bolted to blocks of stone.
CLASS 9.			*Weighing Machines.*
	167	A.	Table fixed in masonry.
	„	B.	Portable machine.
CLASS 10.			*Smiths' Fires and Furnaces.*
	168	A.	Fixed in masonry, &c.
	„	B.	Masonry and iron work.
CLASS 11.			*Water Tanks.*
	168	A.	Fixed on wood columns.
	„	B.	Do. on wood blocks.
	„	C.	Stand upon masonry, not bolted.
	„	CA.	Do. do. do.
CLASS 12.			*Grindstone.*
	168	A.	
CLASS 13.			*Railway.*
	169	A.	

CLASS 1 A.

Horizontal Egg-ended Boiler.

This boiler supplies No. 40 engine with steam. Is 33 feet long by 4 feet 6 inches diameter, and is fitted with the usual

mountings, fire doors, grate bars, &c. Working pressure 30 lbs. per square inch. Is set in ashlar masonry (lined with fire-brick) partially sunk into the ground.

The steam-pipe from this boiler is carried overhead to No. 40 engine, and to the engine attached to No. 59 plate bending machine.

CLASS 1 B.

Cornish Boiler.

This boiler is 26 feet long, 7 feet diameter, with two flues 2 feet 8 inches diameter, and has usual mountings, including feed water heater. Working pressure 65 lbs. This boiler is set in the usual manner in ashlar masonry, lined with fire-brick, the masonry being partially sunk into the ground.

The steam pipes from this boiler are carried overhead to No. 14 engine, and underground to the engine attached to No. 6 punching machine.

CLASS 1 C.

Vertical Boiler.

This boiler supplies the steam required for the engines of Nos. 57, 58, 37, and 36 machines. Is 12 feet high, by 5 feet diameter, and fitted with the usual mountings. It is not set in masonry, but stands upon cast-iron plate sunk into the ground, to which it is not fixed in any way.

The steam pipes from this boiler are carried underground to the machines marked Nos. 36, 37, 57, and 58.

CLASS 2 A.

Horizontal High Pressure Engine, 20-horse power.

Cylinders, 16 inches diameter, with 2 feet stroke. The cylinders, motion bars, shafts, &c., are mounted upon a cast-iron bed plate, and this is bolted to a stone foundation partially sunk into the ground by 12 bolts, $1\frac{1}{4}$ inch diameter.

This engine drives all the machinery on the east side of the high yard and in the joiners' shop.

Weight, about 6 tons.

CLASS 2 B.

Vertical High Pressure Compound Steam Engine.

This engine has 2 cylinders, 10 inches and 14 inches diameter, with 2 feet stroke, and is 30-horse power. The cylinders, motion bars, crankshaft, bearings, &c., are mounted upon a heavy cast-iron pillar, which is bolted at the bottom end, or base, to a large bed stone, sunk into the ground, and up the side of the pillar, to the main wall of the building by 10 bolts, 1¼ inch diameter. This engine is provided with condenser and air and circulating pumps, the pumps being driven by belt from main shaft through a counter shaft, and they are fixed to a concrete foundation sunk into the ground.

Weight of engine, about 10 tons.

Weight of pumps, &c., about 4 tons.

Note.—This engine drives all the machinery in the low yard, excepting those described as having their own engine attached.

CLASS 2 C.

Steam Engines.

One pair of double cylinder vertical engines, having cylinders 10 inches diameter by 24 inches stroke. This engine is of a combined power, equal to 15-horse power. This engine is bolted to one of the cast-iron columns supporting the roof, and is not attached to any stone or other foundation in the floor of the shop.

Weight of engine, about 2 tons.

CLASS 2 D.

One Portable Engine.

This engine and boiler is mounted on small cast-iron wheels, so as to be moved from one part of the shop to another. Has two cylinders, 10 inches diameter by 18 inches stroke, multi-tubular boiler, 12 feet 6 inches long, by 3 feet 6 inches diameter, is fitted with smoke box and wrought-iron chimney, carried through the roof.

About 16-horse power.

CLASS 3 A.

Main-shafting.

This line of shafting varies in diameter from 4 inches to 3 inches, and is about 220 feet long. It is coupled direct to the crankshaft of the engine, No. 14, by the usual disc couplings, and has 8 couplings and 11 bearings or carriages, carried upon an equal number of wrought-iron brackets, bolted to the main wall of the building, and has keyed to it 17 belt pulleys necessary for driving the various machines in its vicinity.

CLASS 3 B.

Main-shaft.

This shaft is driven by belt from No. 40 engine. Is about 210 feet long and 3¼ inches diameter, has 9 couplings, and 26 bearings or carriages, carried upon the principals of the roof, and has keyed upon it the belt pulleys required for driving the various machines in its vicinity.

CLASS 3 C.

No. 1 Line of Main-shafting

(About 237 feet long), is coupled to the crankshaft of the engine, No. 100, by means of the ordinary disc couplings and bolts. This shaft is 4 inches diameter, is fitted with 14 disc couplings, has 14 bearings or carriages, carried on an equal number of cast-iron brackets, bolted at the cast-iron columns carrying the roof. This shaft is provided with turned belt pulleys of various diameters for driving the several machines in its vicinity.

CLASS 3 D.

No. 4 Line of Shafting

(About 165 feet long), is driven by belt from No. 1 Shaft, is 2½ inches diameter, is fitted with 10 disc couplings and 24 carriages or bearings, carried on an equal number of wrought-iron brackets, bolted to the iron girders, carried upon the west wall of the building. This shaft has also a number of turned belt pulleys keyed upon it for driving the several machines in its vicinity.

CLASS 4 A.

Punching and Shearing Machine.

This machine will punch 1½ inch holes through 1¼ inch plate, 28 inches from the edge, and has corresponding shearing power. This machine has the usual cast-iron frame, gearing, &c., and is driven by its own engine of about 7-horse power, bolted to the main frame of the machine itself, and stands upon wood sleepers partially sunk into the ground to the depth of about 6 inches, and to which it is fixed by four screw-eye bolts, $\frac{7}{8}$ths diameter.

Weight, about 14 tons.

CLASS 4 B.

Punching and Shearing Machine.

This machine will punch 1¼ inch holes through 1¼ inch plates, 24 inches from the edge, and has corresponding shearing power. It has the usual cast-iron frame, gearing, &c., and is driven by its own engine of about 6-horse power, and which engine is bolted to the main frame of the machine. Is fitted with cranes, and stands upon wood sleepers, sunk into the ground to the depth of about 6 inches, but is not fixed in any way thereto.

Weight, about 12 tons.

CLASS 4 C.

Heavy Punching and Shearing Machine.

This machine will punch 1½ inch holes through 1½ inch plates, 30 inches from the edge, is driven by its own engine 6-horse power, bolted to main frame of the machine. This machine has the usual cast-iron frame, gearing, &c., and is bolted to concrete foundation, sunk into the ground to the depth of about 2 feet by four, bolts, 1¼ inch diameter.

Weight, 17 tons.

CLASS 4 D.

Heavy Planing, Boring, and Slotting Machine.

This is a very heavy machine. Will admit articles 16 feet 2 inches wide, by 8 feet 6 inches high, and plane an article

16 feet long. Is driven by its own engine (of 5-horse power), attached by bolts to one of the frames of the machine itself. On the cross slide are 2 tool boxes, one for boring only, and the other for planing, boring, and slotting. This machine has a very heavy cast-iron foundation plate 23 feet long, to which the slides for the table, the pillars for carrying the cross slide, and the other portions of the machine are bolted. This foundation plate rests on a concrete bed sunk into the ground, but is not fixed thereto by means of bolts or other fastenings.

Weight, 58½ tons.

CLASS 4 E.

Steam Rivetting Machine (Cook's Patent).

This is a very large and heavy machine, is capable of rivetting up to 2 inches diameter and is supplied with steam from a vertical boiler standing upon brick foundation, near to the machine. The rivetting machine consists of heavy cast-iron frames and holder-up and is bolted down to a concrete or brick and cement foundation.

Weight, without boiler, about 18¾ tons.

CLASS 5 A.

Punching and Shearing Machine.

This machine will punch 1½ inch holes through 1¼ inch plates, 27 inches from the edge, and has corresponding shearing power. It has the usual cast-iron frame, gearing, &c., and is driven by belt from main shaft and is fixed to wood sleepers, sunk into the ground to the depth of about 6 inches by eight ⅞ inch wood screws.

Weight about 14 tons.

CLASS 5 B.

Punching and Shearing Machine.

This machine will punch 1 inch holes through 1 inch plate and has corresponding shearing power. It has the usual cast-iron frame, gearing, &c., and is driven by belt from

counter shaft, and stands upon wood sleepers sunk into the ground to the depth of about 6 inches, but is not fixed in any way thereto.

Weight 10 tons.

CLASS 5 C.

Small Double Horizontal Punching Machine.

This machine has strong cast-iron frame, gearing, &c., and will punch 1 inch holes through $\frac{5}{8}$ inch plate, and stands upon, and is bolted to, a wood frame built into brick work forming a pit, the machine itself being partially sunk into the ground. It is driven by a cross shaft and bevel wheels from the counter shafts named in No. 52 saw bench.

Weight about 3 tons.

CLASS 5 D.

Large Crank Shaft Lathe.

This is a very heavy machine, and has detached geared headstock on cast-iron foundation plate, 3 feet 6 inch centres; face plate 9 feet diameter, with pit in front to admit articles 24 feet diameter on the face plate; cast-iron bed 21 feet 3 inches long, moveable on the foundation plate for widening or narrowing the gap. Is driven by belt from main shaft through the usual overhead motion, and is bolted to a concrete foundation, sunk into the ground by 34 bolts $1\frac{1}{4}$ inch diameter and 6 bolts $1\frac{1}{2}$ inch diameter.

Weight 34 tons.

CLASS 5 E.

Small Hand Lathe.

This lathe has $9\frac{1}{2}$ inch centres, and a cast-iron bed 8 feet 4 inches long. Is driven by belt from main shaft through usual overhead motion. Is bolted to stone blocks sunk into the ground about 18 inches by two bolts $\frac{3}{4}$ inch diameter.

Weight 10 cwts.

CLASS 5 F.

Self-acting Screw cutting Gap Lathe.

This lathe has 7 inch centres and cast-iron bed 6 feet 2 inches long with 6 inches gap. Is driven by belt from

main shaft through usual overhead motion. Is not bolted down, but is partially embedded in concrete, sunk into the ground, so as to steady the machine.

Weight 20 cwts.

CLASS 5 G.

Self-acting Slide Lathe.

This lathe has 12 inch centres and cast-iron bed 16 feet 8 inches long, with a cast-iron lengthening piece 4 feet 2 inches long bolted on. Is driven by belt from main shaft through usual overhead motion. This machine rests upon blocks of stone (sunk into the ground about 18 inches) under each foot, but is not fixed to them in any way.

Weight 4 tons.

CLASS 5 H.

Radial Drilling Machine.

This is a heavy machine, with cast-iron pillar and radial arm, and has a traverse 10 feet outwards on the radial arm. Has not any bed plate, the pillar being bolted to a stone block sunk into the floor by three bolts, $1\frac{3}{4}$ inch diameter. Is driven by belt from main shaft through usual overhead motion.

Weight, $7\frac{1}{2}$ tons.

CLASS 5 I.

Self-acting Wall Drilling Machine.

This machine has cast-iron frame, gearing, &c., and will admit articles 5 feet diameter, is driven by belt from main shaft through usual overhead motion, and is bolted to one of the cast-iron columns carrying the roof by 12 bolts, $\frac{3}{4}$ inch diameter.

Weight, about 8 cwt.

CLASS 5 J.

Small Self-acting Drilling Machine.

This machine has cast-iron frame, gearing, &c., and is bolted to the cast-iron bed of No. 17 lathe, and is driven by belt from main shaft through usual overhead motion.

Weight, 5 cwt.

CLASS 5 K.

Circular Saw Bench.

Will admit a saw 32 inches diameter. Has usual saw spindle and belt pulleys, mounted upon a wood frame or table partially sunk into the ground, but is without bolts or other fastenings. Is driven by belt from counter shaft.

CLASS 5 L.

Endless Band Saw.

This machine has 24 inch pulleys, and has planed cast-iron table, and is driven by belt from counter shaft. It is fixed to the wood floor of the shop by 4 bolts, $\frac{7}{8}$ inch diameter.

Weight, about 9 cwt.

CLASS 6 A.

Smiths' Shop—Steam Hammer.

This hammer is $7\frac{1}{2}$ cwt, has cast-iron standard anvil and sole plate, and is bolted to wood foundation, sunk into the ground by 4 bolts, $1\frac{1}{2}$ inch diameter.

CLASS 7 A.

One Pair of Shear Legs.

These are constructed of wrought-iron, to lift a weight of 80 tons, the back leg being traversed by means of large screw, carried in a long cast-iron frame or bed, and this, together with the lifting and lowering motions, being driven by a special double engine of horse power. The shear legs are bolted to a stone foundation in quay wall by eight bolts, $1\frac{1}{2}$ inch diameter. The cast-iron bed for screw is bolted to a concrete foundation sunk into the ground by 26 bolts, $1\frac{3}{4}$ inch diameter, and the engine is bolted to a wood frame sunk into the ground by 6 bolts, $1\frac{1}{2}$ inch diameter.

Weight of the shear legs...	about	24 tons.
„ „ engine and machinery	„	16 „
	Total	40 „

CLASS 7 B.

One Small Steam Crane.

To lift 3 tons. Is bolted to the wood quay by eight bolts, $1\frac{1}{8}$ inch diameter, and has the usual cast-iron frames, gearing, and mainpost, fixed in a cast-iron bed plate.

CLASS 7 C.

Portable Steam Crane.

This crane is worked by steam. Will lift 5 tons, and has cast-iron frames, gearing, and mainpost, fixed in cast-iron sole plate, bolted to a wood frame, mounted upon wrought-iron axles and wheels, and is moved on a line of rails laid down for it, to different parts of the premises.

CLASS 7 D.

Portable Hand Power Crane,

This crane is in every respect the same as the above (Class 7 B) except that it has not a steam engine attached to it.

CLASS 7 E.

20 cwt. Jib Cranes (Hand Power).

Four in number. These cranes are made of wrought-iron and will lift 20 cwt. each. Are fixed at the bottom in iron footstep bolted to a stone block (sunk into the ground) by four bolts $\frac{3}{4}$ inch diameter and secured at the top by wrought-iron stays from the main wall.

20 cwt. Jib Cranes.

Two in number. Similar to the above (Class 7 E) but bolted to the cast-iron columns carrying the roof by 16 bolts $\frac{3}{4}$ inch diameter.

CLASS 7 F.

One Wrought-iron Hand Power Crane.

This crane will lift one ton. Is bolted to the main wall of the building at the top and bottom and rests in a bracket footstep, and has not any connection with the floor.

CLASS 7 G.

Wood Jib Cranes. In Yard.

Three in number. They are fitted with cast-iron gearing, and have fixed wood mainposts sunk into the ground. Capable of lifting about 3 tons each.

CLASS 7 H.

One Goliath Crane. In Yard.

To lift 10 tons. This crane has wood end carriages and beams for carrying the winch, and travels on rails laid down in yard.

CLASS 7 I.

One Overhead Travelling Crane.

This crane will lift 30 tons and has a span of about 44 feet and consists of the usual winch or crab (for lifting and lowering) which can be traversed from side to side of the shop on a pair of strong wrought-iron girders. These girders are carried on two carriages to allow of the crane being moved from end to end of the shop on the railway rails, mounted on the longitudinal girders, which girders are bolted to the iron columns carrying the roof and to the wall.

This crane is traversed longitudinally and transversely and lifts and lowers its load by power obtained by the before-named square shaft (driven by belt from the main shaft) carried on the main columns of the building.

Weight about 30 tons.

CLASS 8 A.

Graving Dock Pumps.

This is a treble pump, and is used for keeping the graving dock free from water. Is fixed in a strong cast-iron box, set in a wood frame sunk into the ground, and driven by belt from counter shaft.

Weight about 4 tons.

CLASS 8 B.

Two "Cameron's" Patent Donkey Pumps.

These pumps have 6-inch cylinders and 3-inch rams mounted on cast-iron bed plate. They are bolted to stone blocks, partially sunk into the ground, by four bolts ¾ inch diameter. Are used for pumping the water into the boilers.

CLASS 9 A.

Weighing Machine.

Will weigh up to 5 tons. Has table for weighing loaded wagons or carts, fixed in masonry sunk into the ground, and has brick house for steel-yard attached.

CLASS 9 B.

Portable Platform Weighing Machine.

This machine has cast-iron table mounted on wheels, the table being fitted with cast-iron pillar for carrying the steel-yard, and will weigh up to 50 cwt.

CLASS 10 A.

Old Smith's Shop.

Contains 12 Smith's fires, each having brick hearth, partially sunk into the ground, and fitted with cast-iron hearth tuyeres, and wrought-iron covers and chimneys.

CLASS 10 B.

Two Angle Iron Furnaces and One Plate Furnace.

These furnaces are constructed of brick work, are tied together by wrought-iron tie rods and cast-iron plates, and have cast-iron fire doors and frames. The brick work is partially sunk into the ground.

CLASS 11 A.

Water Tanks or Cisterns.

One wrought-iron cylindrical tank, secured to a wood frame carried upon wood pillars, partially sunk into the ground.

CLASS 11 B.

One wood cistern, carried upon blocks of wood, laid upon the surface of the ground, and is not bolted down.

CLASS 11 C.

Water Tanks or Cisterns.

Two in number, both of wrought-iron, and both are stayed to the main wall of the engine building shop. These tanks are vertical, the one inside the engine building shop stands upon a concrete foundation, and the one outside upon a brick foundation, both foundations being sunk into the ground, but the tanks are not bolted to the foundations. One tank is 50 feet high by 5 feet diameter, and the other (inside the building), is about 35 feet high by 4 feet 6 inches diameter.

CLASS 12 A.

Large Grindstone,

With cast-iron trough. Is driven by belt from main-shaft. Is not bolted down, but is secured to the cast-iron columns supporting the roof, by two flat, wrought-iron stays, which are bolted to the said columns by two bolts, $\frac{5}{8}$ inch diameter.

Weight, with stone, about 2 tons.

CLASS 13 A.

Railway.

This railway is about 230 yards long, and is of the usual 4 feet $8\frac{1}{2}$ inch gauge, and is laid in cast-iron chairs, upon wooden sleepers, in the same manner common to railway lines. The above-named railway forms the means of communication between the engine and the boiler building shops, and the steam shears, the various articles manufactured or repaired on the premises, being conveyed thereon from shop to shop, or from the various shops to the steam shears for shipment.

PRINCIPLES TO BE OBSERVED IN RATING PROPERTY.

In valuing property for parochial assessments, "All the existing circumstances must be considered, whether permanent or *temporary*, wherever situated, however arising or secured, which would reasonably influence the parties to a negotiation for a tenancy as to the amount of the rent to be asked or given." R. *v.* G. J. Ry. Co. 4 Q. B., 18. And nothing must be excluded which adds to the value of the occupation. R. *v.* Dorking, 18 Jurist., 673.

In rating property it is frequently contended that "*temporary*" occupations and things which are movable are not rateable. And in Cory & others *v.* Bristowe, where the plaintiffs had permission to lay down moorings (consisting of four anchors and two stones) for derricks or coal hulks, holes were made in the bed of the river Thames large enough to contain the anchors and stones, which were then covered with ballast. The derricks were attached by chain cables to these moorings, and had been so moored for many years, and large rents were paid to the Thames Conservancy by the plaintiffs. The derricks slightly changed their position daily with the ebb and flow of the tide. The moorings were to be continued during the pleasure of the Conservators, and to be removable at a week's notice. The Court of Common Pleas held "That the plaintiffs had only a license or permission to use the soil of the bed of the river, and no exclusive occupation thereof, and therefore that they were not rateable to the Poor Rate in respect of the moorings." But the Court of Appeal reversed this judgment, and held "that the derricks were liable to be rated to the poor, for they exclusively occupied a part of the river." Lord Justice James, in giving his judgment, referred to the settled law with regard to gas pipes, water pipes, &c., and said, "We are told to put a different construction on this occupation, because by one week's notice the Conservators have power to terminate it by requiring the mooring chains to be removed; and in case default should be made in such removal, beyond the time to be mentioned in the notice, such mooring chain is to be treated

by the Conservators as a nuisance and removed accordingly; but that, to my mind, strengthens the defendants' case, because it shows that for one week the plaintiffs have complete possession. . . . I am, therefore, of opinion that the defendants are rateable." Mellish, L. J., concurred in this opinion, and referred to the rating of telegraph-posts. Baggallay, J. A., and Blackburn, J., also concurred. And the decision of the Court of Appeal was confirmed by the House of Lords, 41 J. P., 709.

THE "ORDINARY WAY" OF LETTING LAND WITH BUILDINGS AND FIXTURES THEREON.

In R. *v.* Mile End Old Town, 16 L. J. R., M. C., 184, Lord Denman, C. J., said, in referring to the principle of valuation which had been adopted in valuing the parts of the works, bringing the water to the service pipes, "that these had been first rated in the '*ordinary way*' *by valuing the land with buildings and fixtures upon it.*"

The "ordinary way" of letting land with buildings and fixtures upon it is to demise the land for terms of years, and in the case of *new* buildings and fixtures, to add to the rent of the land interest on the capital expended on such buildings and fixtures, and in the case of *old* buildings and fixtures to add to the rent of the land, interest on the capital values of such buildings and fixtures at the time of the demise of the premises.

This principle is so well known and generally understood that it is scarcely necessary to explain it. It probably originated in the practice uniformly adopted in letting agricultural lands. Where the landlord improved the land by drainage or otherwise, or erected buildings and fixtures upon it, the tenant was charged, in addition to the rent of the land, interest on the capital so expended.

It is also adopted in letting lands, buildings, and fixtures for manufacturing purposes. The following extracts from memoranda for calculating the rents of "large works," which are *bonâ fide* let, show not only the principle, but also the percentages on which the annual rents of the lands, with buildings and fixtures, are calculated:—

No. 1.—The lessees covenant to pay as rent for the land 5 per cent. on its fee simple value, 7½ per cent. on the cost of the buildings, and 10 per cent. on the cost of the machinery.

No. 2.—The lessees covenant to pay as rent 4½ per cent. on the cost of the land, 6½ per cent. on the cost of the buildings, and 7½ per cent. on the cost of the machinery.

No. 3.—The lessees covenant to pay the ground rent of the land on which the works are erected, and 8½ per cent. on the capital expended in buildings and machinery.

In the foregoing cases the lessees also covenant to repair and maintain the buildings and fixtures, or at the end of the leases pay for depreciations.

In an appeal heard at the Newcastle-on-Tyne Quarter Sessions, Mr. Thos. Bell (of the eminent firm of Bell, Bros., Iron Manufacturers), in giving evidence for the appellants (Sir W. Armstrong & Co.), said he estimated the annual value of the blast furnaces on the rent of the land, and interest on the cost of erecting the furnaces.

And Mr. Joseph Scott, another manufacturer of great experience, confirmed this principle, and said, "he always adopted this rule for calculating the rents of manufactories."

And the same principle is also adopted in calculating the rent of other properties.

Where Corporations construct tramways and lease them to tramway companies, the rents are calculated at from 5 to 8 per cent. on the cost of construction.

And where the lessor of lands constructed a graving dock for his lessee, the lessee covenanted to pay, in addition to the rent of the lands, 6 per cent. per annum on the cost of constructing the dock.

And where the lessor of a brewery agreed to erect a malting for his lessees, the lessees covenanted to pay, in addition to the rent of the land, 6 per cent. upon the cost of the malting.

And so also where the lessor of a brewery agreed to build a public-house for his lessees, the lessees covenanted to pay a rent calculated at 6 per cent. on the cost of the land and buildings.

Where the owner of a dwelling-house agreed to alter the house into a shop, the tenant agreed to pay, in addition to the rent of the house, 6 per cent. on the cost of the alterations.

And where the owner of a large mansion house let the

house by lease to a tenant, the lessee agreed, if the landlord erected a vinery and greenhouse, to pay, in addition to the rent of the mansion house, 5 per cent. on the cost of the vinery and greenhouse.

The same principle is also adopted in letting mines and minerals where the lessors undertake to sink the shafts and erect the buildings, and engines, and lay down the tramways; the lessees covenant to pay, in addition to the rents of the surface lands and minerals, rents for the shafts, buildings, engines and tramways, calculated at from $7\frac{1}{2}$ to 10 per cent. per annum on the capital to be expended.

The "Ordinary Way" Adopted by Parliament.

By Sec. 21 of the Act for the Valuation of Lands and Heritages in Scotland, 17 & 18 Vict., cap. 91, the assessor of railways and canals shall inquire into, and fix the amount required in order to the acquisition, formation, and erection of the several stations, wharves, docks, depôts, counting-houses, and other houses and places of business respectively in Scotland, of or connected with each railway and canal (including the *solum* on which such station and others are erected.)

And Sec. 22 enacts that there shall be deducted from the cumulo yearly rent, or value of the whole lands and heritages in Scotland as aforesaid of each such railway or canal company, a sum equal to three pounds per centum of the whole cost as aforesaid of the stations, wharves, docks, depôts, counting and other houses and places of business in Scotland But by Sec. 4 of the Act 31 & 32 Vict., cap. 80, the *three pounds* per centum is increased to *five pounds* per centum. The railway stations, wharfs, &c., connected with the railways in Scotland are therefore valued and rated at rentals calculated at 5 per cent. on the cost of the lands and buildings.

The "Ordinary Way" adopted by the Court of Queen's Bench.

In 1859, the Court of Queen's Bench, in R. *v.* West Middlesex Water Works Co. (28 L. J., M. C., 135), laid down the same principle for ascertaining the same rateable value of

the parts of the water works directly earning nothing, but indirectly conducing to such earnings elsewhere, in the following manner :—

"A hypothetical tenant must be assumed, and the terms of such tenancy are not difficult to be conceived, the company to whose interests such continued co-operation of these parts of the work is essential must be assumed to pay adequate remuneration to a contractor for land and fixed capital vested therein, and these contractors with the company would stand in the relation of occupying tenants in the parish, and the part within the parish would be the rateable subject, and the local rateable value would be such a sum as would pay the rent of the land and the *profit* on the fixed capital vested therein."

Mr. Justice Blackburn, in the Blyth Harbour and Dock Company *v.* Tynemouth Union, laid down this principle for ascertaining the annual value of a lighthouse which produced no direct profit, but was valuable to the Harbour Board. The learned Judge said :—

"Though no tenant would take the lighthouse, nevertheless the Commissioners, in order to earn their dues, found it very desirable to put up a lighthouse to induce vessels to come in, and so enhance their revenue, and therefore the lighthouse is a beneficial thing. The sessions must see what is the value of the occupation of the lighthouse, taking it to be of value on that account. It depends very much on the position of the spot of land, though the land, as I understand it, belongs to the Commissioners, so that there is no rent actually charged. The real question is, if this bit of land had belonged to another person, what would be the fair rent to be given by the Commissioners? . . . Then the fair interest on the expense of building the lighthouse. It is for the sessions to say what it should be."

The "Ordinary Way" Adopted by the Railway Commissioners.

The Railway Commissioners adopted this principle in an appeal by the London and North Western Railway Company, against the rating of Wigan station. In delivering

their judgment, they said, "In the case before us, the mode of rating has been to take a percentage upon the present value of the station, and the evidence did not show that the land or structures had been over-valued."

THE "ORDINARY WAY" ADOPTED BY THE METROPOLITAN COURT OF GENERAL ASSESSMENT SESSIONS.

The Metropolitan Court of General Assessment Sessions have laid down the same principle in rating School Board schools, water works, railway stations, &c., in the following cases (*vide* Mr. Edward Ryde's Summary of Appeals, 2nd edition).

SCHOOL BOARD SCHOOLS.

The School Board for London v. *the Assessment Committee of the Hamlet of Mile End Old Town.*

In an appeal brought against the rating of four School Board schools, the Court decided "That the School Board must be regarded as a hypothetical tenant, and that there could be no better criterion of the rent which they might be reasonably expected to give, if these buildings, being appropriate for their purpose, were in the market, than by taking the actual outlay for land and buildings, and allowing a fair percentage on that outlay" (page 123 of Ryde's Report).

WATER WORKS, RESERVOIRS, AND ENGINE-HOUSES.

The New River Co. v. *Hackney Union.*

"Both parties concurred in fixing the rateable value of the property at some rate of interest upon the structural cost of the buildings and the fee simple value of the land. The Court fixed the fee simple value of the land at £800 an acre, and directed that the rate of interest thereon should be taken at 4 per cent. They also directed that an addition equal to 5 per cent. on structural value should be made in respect of the buildings" (pages 39 and 40).

WATER WORKS, UNPRODUCTIVE MAINS AND STATIONS.

The Kent Water Works Co. v. *Woolwich Union.*

"Mr. Ryde, in his valuation, ascertained the rateable value of the unproductive mains, and of the stations, by estimating their structural value, and taking the rental value as equal to 5 per cent. thereon, plus a reasonable ground rent" (page 70).

RAILWAY STATION.

The South Eastern Railway Co. v. *Lewisham Union.*

"The Court expressed an opinion that where interest on cost of construction is taken to be the rateable value of a station, the rate of interest should be 5 per cent" (page 59).

THE "ORDINARY WAY" ADOPTED BY RAILWAY COMPANIES IN RENTING AND LETTING STATIONS, &C.

Railway companies also adopt this principle as well in renting stations as in letting buildings and sidings connected with their railways to other railway companies and to traders.

PETERBOROUGH STATION.

The London and North Western Railway Co. agreed to pay to the Eastern Counties Railway Co., by half-yearly payments, such sum annually as was equal to 5 per cent. on the cost of the land and buildings at Peterboro' station, used exclusively by the London and North Western Railway Co., and for that part of the station used jointly with the Eastern Counties Railway Co., a sum equal to 7 per cent. on half the outlay of stations and buildings jointly used by the two companies.

The London and North Western Railway Co. covenant to keep in repair that part of the station exclusively occupied by them, and the Eastern Counties Railway Co. covenant to keep in repair that part of the station and buildings jointly occupied by the two companies.

In the first case, the rent calculated at 5 per cent. on the cost, represents the local "rateable value;" and in the other case, the rent calculated at 7 per cent. on the outlay, represents the "gross estimated rental" of the station.

WARRINGTON STATION.

The Birkenhead Railway Co. agreed to pay to the London and North Western Railway Co. a rent equal to 6 per cent. upon the actual cost of the station accommodation required by them at Warrington.

MINORIES GOODS STATION.

The London, Tilbury, and Southend Railway Co. agreed to pay to the London and Blackwall Railway Co. a rent equal to 6 per cent. per annum upon the cost of the station and land.

ROYAL MINT STREET GOODS STATION.

The Midland Railway Co. agreed to pay to the London and Blackwall Railway Co. a rent equal to 6 per cent. upon the cost of the station.

MINORIES GOODS STATION.

The Great Northern Railway Co. agreed to pay to the London and Blackwall Railway Co., in addition to the rent of the land, a rent equal to 6 per cent. on the cost of the station.

And in cases where railway companies erect warehouses on their lands or lay down private sidings for traders, they charge the lessees rents, generally calculated at 6 per cent., on the outlay.

RATING PROPERTY WHICH IS NOT LET.

In proceeding to get at the value of property which is not let you must proceed to ascertain the values, "looking at the elements which a tenant would take into consideration on taking it from year to year, *if it was let*."—Blackburn, J., R. *v.* Lee, *ante* p. 25.

And, "you must treat this imaginary tenant under the Parochial Assessment Act, as placed in precisely the same circumstances as those who are the present occupiers of the property to be rated."—R. *v.* Tyne Improvement Commissioners, 6 L. T. (N. S.), 489.

In R. *v.* Lee, Mr. Justice Lush said, "without the retorts, purifiers, the steam engines, and the gasholders, the premise

would be worthless for the purpose for which these things were erected; they would not be a gas manufactory at all."

And, so it is with Mr. Jas. Laing's shipbuilding yards without the engines, machinery, and plant set out in the foregoing Appendix, the shipbuilding yards would be worthless for the purposes for which these things were erected; they would, in fact, not be shipbuilding yards at all.

SHIPBUILDING YARDS WHICH ARE LET.

And, where current-going shipbuilding yards are actually let, such engines, machinery, and plant as those described in the Appendix are let with the premises and included in the rents. This is shown by the following Inventory and Schedule to Lease of Shipbuilding Yards, which are let, viz. :—

Four double hearths with iron covers.

Four double hearths in upper end and two single hearths for jobbing smiths.

An overhead travelling crane to lift about 10 tons, with 48 feet of $1\frac{1}{8}$ inch chain and 5 handles, with a large snatch block 3 cwts. 2 qrs.

A pair of 11 feet rolls for bending plates, driven by a donkey engine with steam piping from main east boiler.

A lever punching and shearing machine driven by donkey engine with steam piping to main east boiler.

A donkey engine 8-inch cylinder for supplying river water to boiler, with steam pipe from main east boiler, and large water pipe to run water up to boiler.

A crane driven by two 5-inch cylinders, 9-inch stroke with 70 feet $\frac{7}{8}$ inch short link chain, and two handles, also steam pipe from main east boiler.

One pair of shear legs 63 feet high, with platform 24 feet by 16 feet and 21 feet above quay with winch on it, and 2 handles for hauling boilers, &c., &c., ladder up to it 24 feet by 26 inches wide; a pair of large iron blocks for hoisting boilers, one four-fold and one three-fold, with 448 feet of $\frac{3}{4}$ inch short link chain; bridle chain, each 38 feet long; one $\frac{1}{8}$ inch stud-link main guy chain, 124; and one $\frac{1}{2}$-inch stud-link chain, and 1 large shackle weighing 2 qrs. 24 lbs.*

* It is frequently contended that chains and shackles connected with cranes ought not to be included in the value of the crane as the chains and shackles are moveable, but they are essential parts of the crane and ought to be included, as the crane would be useless without the chain. See R. *v.* Brinjes, *ante* p. 57.

Winch, double purchase, in yard, with two handles, for heaving in shear legs and a pair of large iron blocks, one four-fold and one three-fold, and ½ inch chain weighing 6 cwts. under the platform, two angle bars for bogie to run on each 33 feet by 6 inches by 2½ inches by ½ inch. Alongside of those sheer legs a gangway 46 feet long by 4 feet 2 inches broad resting on 8 legs.

One horizontal engine, 18½ inch diameter of cylinder, 3 feet stroke with expansion slide, one fan blast about 3 feet 2 inches diameter and 11 inches wide, feed pump for boiler.

A Cornish boiler with two flues, length 20 feet 10 inches, diameter 6 feet 5 inches, with two safety valves. Blow pipe, feed pipe, two gauge cocks, scum cock, water gauge cock on boiler for wood, steamer cock, and pipe for coffee warmer cock, main steam pipe for supplying two donkeys (one for rolls and one for punching), machine pipes from boiler for quay for donkey pumping salt water, and donkeys on crane, patent tallow cup on steam pipe.

One iron boiler for cistern 16 feet long, 4 feet 6 inches diameter, supplied by the 8 inch donkey metal pipes from spouts, brass cock bottom and lead pipe to run water out, and metal air pipes on top and a gauge cock.

One iron cistern 10 feet 5 inches by 4 feet, square metal pipe to feed pump, 1½ inch brass cock on bottom for running water out, pipe for supplying blacksmiths' furnaces, one coffee warmer.

One grindstone and metal trough.

One very large eccentric punching and shearing machine with crane upon it driven by belt.

One lever punching machine on wood frame and driven by belt.

One lever punching and shearing machine, with crane upon it; metal frame; driven by belt.

Two screwing machines,

One large drilling machine,

Two small drilling machines (all driven by belts).

A circular saw bench 37 feet long, with spindle shears, &c., complete.

One upright saw frame, also shafting, sheaves, &c., for driving all the above machinery except that driven by donkey engine which has the necessary steam pipes.

Furnaces for turning angle iron.

Two plate furnaces, boiler about 27 feet long by 5 feet 10 inches diameter, set in brick work, with two safety valves, blow cock, steam gauge.

A boiler used as a cistern, 28 feet long, 8 inches diameter, with feed pipe to engine, one pipe and cock for running water to main boiler cock on bottom to run water out, two air pipes on top-wood spout to run water from the roof.

Engine, 11 inch cylinder, 2 feet 2 inch stroke.

Seven single fires with iron covers and chimneys.

Four double fires with covers and chimneys.

Two round hearths with two blast pipes to each on shop floor, all with blast pipes.

One iron crane for use of blacksmiths.

Four blasts about 3 feet 2 inches diameter and 11 inches broad, with two sheaves on it, together with shafting above for driving the same.

One large eccentric punching and shearing machine, with crane, driven by donkey engine with metal pipes from main north boiler attached to and worked from one of the shafts of this machine are two drilling and counter-sinking machines.

A large keel plate bending machine.

A large punching and shearing machine driven by a donkey engine, with crane, and metal steam piping for main north boiler. A large plate bending machine, 12 feet rolls, and driven by a donkey engine, 8 inches diameter and 14 inch stroke, metal steam pipes from main north boiler.

The lessees covenant to keep the buildings and machinery in good repair aud condition, and replace any part of the machinery that may be broken during the tenancy.

EXTRACT FROM A SCHEDULE

OF THE

Engines, Machinery and Plant of a current-going Iron Shipbuilding Yard, demised by lease, and included in the yearly rent. The Lessees covenant to repair and maintain the Buildings, Machinery, and Plant.

Engines and Machines.

1 large engine—1 small engine—punching, shearing, and angle iron shears—punching and angle iron shears—ck. drill

machine—ck. drill machine—drilling machine—reel drilling machine—horizontal double punching machine—large plate rolls with engine—punching and shearing machine with engine—rivetting machine and furnace—planing machine—planing machine—punching and shearing machine—punching and shearing machine—punching and angle iron shears—double punching machine—punching and shearing machine—drilling machine — drilling machine — lathe — 3 screwing machines—ck. drill machine—double punching machine with engine — wall drilling machine — punching and shearing machine—2 steam hammers—bar-bending machine—binding rolls for keel plates—bar bending machine—ck. drill machine—small planing machine.

In fitters' shop.—Fan blast—old fan blast—3 boilers—large engine and boiler.

In joiner's shop.—Large circular saw bench—small circular saw bench—circular saw bench—band saw—tenon machine—mortise machine — planing and moulding machine — large lathe—hand mortise machine—small lathe—grindstones.

Bending and straightening blocks.—20 C.J. bending blocks—36 C.J. bending blocks—1 straightening block, 9 feet by 4 feet 6 inches, by 6 inches—1 straightening block, 12 feet by 6 feet by 3 inches—2 square blocks, 7 feet by 2 feet by 3 inches.

Furnaces.

Large furnace and chimney—small furnace and chimney—plate furnace.

Piles.

No. 1 slipway piles and heads—No. 2 slipway piles and heads—No. 3 slipway piles and heads—No. 4 slipway piles and heads.

Shafting.

1,292 feet of shafting and coupling.

Cranes.

Two cranes (hand).

Railway.

600 yards of railway.

WHEN MACHINERY AND PLANT ARE PURCHASED BY LESSEES.

In many cases the lessees of manufactories pay rents for the lands and buildings, and purchase the machinery and plant, but this is immaterial for the purposes of rating.

In R. *v.* Lee, it was proved, on the part of the Phœnix Gas Company, and found as a fact by the Court of Quarter Sessions, upon the evidence before them, "that, according to the practice and course of business, in letting and hiring gas-works the tenant would have to take to and find capital for all the property comprised under the heads 'meters,' 'retorts,' 'tenants' fixtures,' and 'utensils,' and would have to provide £150,000 for that purpose." And the Company contended that these things were not rateable, and claimed an allowance for interest and tenants' profits (*ante* p. 21). But the Court held that all the above, with the exception of the meters (which were not upon the premises of the Company), should be taken into account in determining the rateable value of the Company's works (*ante* p. 17). Cockburn, C. J., in delivering his judgment, said, "I entirely agree that we must look not to the position of the actual tenant as to whether he has had to pay so much additional money down for the machinery and fixtures which are necessary for the working of the concern, but we must look to see what, as the whole concern stands, would be the rent that an imaginary tenant would give for the thing as a whole." . . . Blackburn, J., said, "It was disposed of early in the case, that the question is, what would a hypothetical tenant give for the whole of the rateable property? And although in point of fact, as stated in the 18th paragraph of the case, the person who actually did occupy would not pay rent for portions of the property which are fixed to the rateable premises, so as to become part of it, which would be capable of removal, because, instead of paying rent, he would purchase them." . . . . And Lush, J., said, "The question is, what is the rateable subject which is comprised within the premises to be rated here? Now, I apprehend that the premises to be rated are to be taken as they are, with all their fittings and appliances by which the owner has adapted them to a particular use, and which would

pass as a part of the premises by demise of them to a tenant. . . . . Now, applying that rule, I cannot entertain a doubt that, with the exception of the meters, all the subjects of discussion here would pass as a necessary part of these premises. Without the retorts, purifiers, the steam engines, and the gas-holders, the premises would be worthless for the purpose for which these things were erected; they would not be a gas manufactory at all."

THE RATING OF SHAFTS, TUNNELS, ENGINES, AND PLANT CONNECTED WITH MINES AND MINERALS.

In letting mines and minerals, the lessors usually demise for term of years the surface lands required for the pits, buildings, and fixed plant at yearly rents, and the minerals at certain fixed annual rents called in different districts "minimum rents," "dead rents," or "sleeping rents," with liberty to work specified quantities of minerals in consideration of the payment of such rents and "royalties" at prices per ton or per acre on all minerals worked beyond such specified quantities.

The term "Royalty" was first applied to minerals by the Romans, and means, in this country, the parts or shares of the produce of the mines or minerals or the value thereof in money which are reserved by the lessors, and rendered or paid by the lessees for the concession of the right to remove a substance from the land itself, or for liberty to win, work, and carry away the minerals.

In rating mines and minerals it has been laid down by the Superior Courts that "*Royalty*," whether paid in money or in kind, or the amount is fixed beforehand by contract, or measured afterwards by the actual producer, *is equally in substance a rent.* R. *v.* Everest, 10 Q. B., 178.

The royalties or rents, rendered or paid for minerals, only represent the values of the minerals, *per se*, as the lessees, in practice, covenant to sink the pits or shafts, or drive the adits or levels, and erect the buildings and engines, and make the railways necessary for winning, working, and carrying away the minerals. And it is admitted if the lessors of the minerals had sunk the shafts, or driven the adits or levels, and erected the buildings and engines, and laid down the fixed plant necessary for working the minerals, the lessees would either pay an additional royalty or fixed annual rents, calculated at interest on the capital expended, for the use of such shafts, buildings, &c.

HOW CURRENT-GOING MINES AND MINERALS ARE LET.

The following extract from the lease of a current-going colliery shows that the foregoing principle is adopted where collieries are let—"The parties hereto of the second part (the lessees) yielding and paying for all coals and cannel which shall be gotten or raised, in, from, or out of all and every, or any of the mines hereby demised, three shillings and four pence for every twenty shillings worth of coal . . . . such quarterage to be calculated by and according to the selling prices for the time being of the coal and cannel at the pit's mouth; also yielding and paying for and in respect of the said pit called A pit, and the steam engines, engine-houses, and workshops, and other buildings and conveniences, near to or adjacent to such pit, the yearly rent or sum of £3,000, payable quarterly."

RATING MINES AND MINERALS.

In assessing mines and minerals to the rates for the relief of the poor, the royalty is generally taken as the measure of the annual value of the minerals, to which is, or ought to be, added, the rent of the surface lands, and the annual values of the shafts, buildings, engines, and fixed plant connected with the mines and minerals, but in many districts the assessment of mines and minerals are limited to the royalties for the minerals alone, and the lands, and shafts, buildings, engines, and fixed plant connected with the mines and minerals *are not rated*, although the Superior Courts have solemnly decided that the surface lands and the shafts, buildings, engines, and fixed plant connected with mines *are rateable.*

SHAFTS OF COAL MINES HELD RATEABLE.

R. *v.* Foleshill, 2 A. & E., 539, Littledale, J., said, "As to the pits or shafts they are rated in the one parish in which they are available for raising the coal; if another shaft became necessary for raising the coal in the other parish *it would be a subject of a rate there.*"

A TUNNEL FOR CONVEYING WATER TO A LEAD MINE HELD RATEABLE.

The Talargoch Mining Company *v.* St. Asaph Union, 37 L. J., M. C., 149. The question for the Court was whether a water-course, partly opened and partly tunnelled for conveying water to a lead mine was rateable.

Cockburn, C. J.—"We are dealing with a water-course passing over a considerable extent of land, and we must treat that land as enhanced in value by the water-course."

Blackburn, J.—"I quite agree with what my Lord has said The first question is one of fact. Are the company in the occupation of the water-course, and of the bricks, &c.? If they are occupiers, they are properly rateable."

This water-course is constructed in the same manner as the adits or levels by which many mines are worked; therefore, if the land is enhanced in value by the excavation and bricks forming the water-course, so the value of lands must be enhanced by the construction of adits or levels, and such lands ought to be rated accordingly.

ENGINES AND RAILWAYS CONNECTED WITH COAL MINES HELD RATEABLE IN ADDITION TO THE ROYALTY.

R. *v.* Lord Granville, 2 B. & C., 189. The question for the Court was, whether the appellant ought to be rated for the engines and railway, in addition to what he ought to pay as mine rent?

Bayley, J., said, "The only point for our consideration is, whether the defendant ought to be rated for the engines and railway? I think he ought to be rated." And Littledale, J., said, "It is immaterial whether the landlord or tenant erect an engine or lay down a railway; the bargain between the landlord and tenant may be varied on that account, but the occupier of the property is rateable in respect of its improved value,"

And in R. *v.* Attwood, 6 B. & C., 277. Abbott, C. J., said, "If a tenant of a mine expend money in making it more productive, that is the same as expending money in improving

a farm-house, in which cases the tenant is rateable for the improved value."

THE SURFACE LANDS, BUILDINGS, MACHINERY, PLANT, TRAMWAYS, AND WORKSHOPS CONNECTED WITH IRON ORE MINES, TIN MINES, AND LEAD MINES HELD RATEABLE.

Guest *v.* East Dean, L. R. 7, Q. B., 334. The question for the Court was whether Guest, the owner of certain mines (iron ore), which were not rateable, and was also lessee of some surface lands on which he had erected buildings, engines, boilers, plant, and tramway, for the purpose of working the mines, was rateable for the said surface lands, &c.

Held "That the appellant was liable to be rated in respect of the surface land with the buildings, machinery, plant, and tramways, and other workshops connected therewith."

In Kittow *v.* the Guardians of Liskeard Union, L. R. 10, Q. B. 7. Where a tin mine was not rateable, the buildings, machinery, and tramways erected on part of the surface lands, within the limits demised by the grant, were held rateable.

In the Van Mining Co. *v.* Llanidloes Union, 40 Shaw's Justice of the Peace, 598. Where the lessor and owner of the mine was rateable for the minerals under the statute 43 Eliz., the lessee was held to be rateable for the surface lands, shafts, buildings, engines, and machinery connected with the mine. And the rule sets out "that the principle on which the surface land with the buildings, machinery, plant, tramways, and other workshops upon it is to be rated is to assume the mine and the surface to belong to separate owners, and then to say what rent the owner of the mine would give to the owner of the surface land with the buildings, machinery, plant, tramways, and other workshops upon it."

THE PRINCIPLE LAID DOWN FOR RATING MINES APPLIED IN RATING OTHER SIMILAR PROPERTIES.

The same principle which has been so clearly laid down by the Superior Courts for rating the surface lands, shafts,

buildings, machinery, and tramways connected with mines has also been laid down, and is generally adopted in rating other similar properties. For instance, the pumping stations and pipes connected with water works have been held rateable. R. *v.* Mile End Old Town, 10 Q. B., 208; R. *v.* West Middlesex Water Works Company, 32 L. T., 388.

The pumping stations connected with water works consist of the surface lands, shafts or wells, engine-houses, and engines and pumps, all of which are constructed in precisely the same manner as the shafts, buildings, engines, and plant connected with mines, and the only difference between the shafts, &c., of water-works and mines is, the one is used for raising water to the surface, and the other for raising minerals.

So also as to the pipes; these are laid under the ground, and occupy no part of the surface, but the Courts have held the land to be rateable as enhanced in value by the pipes, although "another person was rated for the surface." R. *v.* Chelsea Water Works Company, 5 B. & Ad., 156. And the only difference between water-pipes and tramways connected with mines is, the tramways are laid on the surface, and are used for conveying minerals, whilst the water-pipes are under the surface, and convey water.

And in the Pimlico Tramway Company *v.* Greenwich Union (L. R. 9, Q. B. 9), Blackburn, J., said, "They (the tramways) are in the same situation as water-pipes and gas-pipes laid under the highway; but this, I think, makes no difference. The tramway, therefore, I think, was properly rateable."

And the principle for rating pumping stations and pipes is clearly laid down by the Court of Queen's Bench, in R. *v.* West Middlesex Water Works Co.; that is, a hypothetical tenant is to be assumed, "and the terms of such tenancy are not difficult to be conceived; the occupying tenant must be assumed to pay adequate remuneration to a contractor for land and fixed capital vested therein. And the local rateable value would be such a sum as would pay the rent of the land, and profit on the fixed capital thereon." This is practically the same principle as the Court laid down in the rule in Guest and East Dean.

THE PUMPING STATIONS AND LAND CONNECTED WITH THE METROPOLITAN SEWERS HELD RATEABLE.

R. *v.* the Metropolitan Board of Works, 33 Shaw's Justice of the Peace, 115.

The property comprised in an assessment consisted of 3 a. 3 r. 20 p. of land, on which was erected engine-houses, engines, and machinery, and pumps used for pumping the sewage. The pumps were fixed in a shaft or well. The Court held the Board of Works were rateable for the pumping station.

ENGINES USED AT INTERVALS ONLY, HELD RATEABLE, AS IF IN OPERATION THE WHOLE YEAR.

And in the Birmingham Canal Navigation Company *v.* the Overseers of Birmingham, 19 L. T. (N.S.), 311. Where an engine-house, engine, and pumps used for pumping water for the use of the canal was rated, the company appealed, as the engines were used at intervals only, but were kept in constant state of repair, ready to work at any moment, but were only used on an average about twenty days in each year; but the Court held the engine-house and engines were rateable, as if they were in operation the whole year.

HOW CURRENT-GOING BRICK WORKS ARE LET.

The principle adopted in letting minerals is also adopted in letting brick works. A. leased from B. a piece of land at a yearly rent of £200, with the right to work the clay and make bricks. The lessee, at considerable expense, erected large engine and mill-houses with boilers, engines and mills, drying sheds, kilns, stables, offices, &c. The lessee subsequently sub-leased the whole as a current-going concern, at a yearly rent of £900. The sub-lessees covenanted to repair and maintain the buildings, machinery and plant. The following is a list of the engines, machinery, and plant, included in the sub-lease :—

One horizontal high-pressure steam engine with cylinder 26 inches internal diameter, fixed upon massive brick foundation and fitted with all necessary steam, feed, and exhaust pipes.

One wrought-iron feed water heater fixed upon principals in roof and supplied with water by a jack-head pump worked by an eccentric fixed on crank shaft of engine. The heater is fitted with all necessary supply and overflow pipes, valves, &c.

Three cylindrical steam boilers, each 33 feet in length and 5 feet 6 inches in diameter, fixed in brickwork and furnished with fire doors and frames, dead plates, bearers, and fire bars, also with stop and double safety valves, feed valves, steam and water gauges, and all necessary connecting pipes.

The brick machinery consists of—

One top clay mill with 2 pairs of crushing rolls and frames, very strong driving gearing connecting top mill with engine.

One large mixing pan and vertical pug with connection.

One set of winding gear for wire-rope with framing disengaging and brake gear.

One bottom or odd stuff mill with 2 pairs of crushing rolls and framing.

One vertical pug and connections with connecting gear to top mill.

One set of massive iron columns with caps and bases for staying mill-balks and fixed with bolts complete.

One set of incline framing and balks, with wrought-iron bridge rails, extending from top mill to bottom of marl-hole.

One improved clay wagon, with wrought-iron body resting on timber frame supported on wheels and axles.*

One plough steel-wire rope, extending from drum or winding barrel over large pit pulley down to wagon in marl-hole.*

* The wagon and wire-rope are essential parts of the incline, and must, for assessment purposes, be included in the valuation of the plant.—See R. *v.* Brinjes, *ante* p. 57.

ATTEMPTS TO GET LAING *v.* OVERSEERS OF BISHOPWEARMOUTH OVERRULED.

Since the decision in this case, attempts have been made from time to time to re-open the question of the "Rating of Machinery and Plant," and to state cases for the opinion of the Supreme Court with a view, if possible, to get this decision overruled. In some of these cases where the overseers were favourable to the manufacturers, the facts have been stated in a manner calculated to mislead the judges. For instance, it has been stated, as a fact, that the machinery and plant of current-going works *is invariably the property of the tenants*, and is always treated as such.

The writer has seen a case which was stated for the opinion of the Supreme Court, and "approved for the respondents" (*i.e.* the Overseers), in which a large and massive machine, weighing several tons, which was affixed by bolts and screws to a foundation of brick and stone erected in a building designed and built for the special purpose of the machine, was described as a mere chattel capable of being moved like the ordinary furniture of a dwelling-house!!! The case was ultimately abandoned.

And in the Halstead case, Mr. Morris, a valuer and mill architect of Manchester, in his evidence, referring to the winding machines and looms of a silk and crape factory, said "there was no case in which a machine of this kind was not considered tenant's property; never knew a variation of that rule."

But it is immaterial in rating premises, whether the machinery and plant are the property of the owner or occupier, the occupier is rateable, see R. *v.* Guest and Others (*ante*, page 5), and R. *v.* Southampton Dock Company (*ante*, p. 6); and as property which is not let must be rated "*as if it was let.*" R. *v.* Lee (*ante*, p. 25) and the imaginary tenant must be treated as placed in precisely the same circumstances as the present occupier, R. *v.* Tyne Improvement Commissioners (*ante*, p. 177). And you must rate the occupier in a sum equal in amount to that for which the premises would let to other persons willing to carry on the same business. R. *v.* Birmingham Gas Light Company (*ante*, p. 4).

It has already been shown by the Schedules quoted

and Inventories of current-going works which are let (*ante*, pp. 178, 181, and 190), that the machinery and plant *is not invariably the property of the tenant*, and as it will be seen from a large number of advertisements of going concerns "To Let," taken from local newspapers, and set out *infra*, that machinery *is not* always the property of the tenant but that of the landlord and is to let with the premises, and is taken into account in ascertaining the amount of rent to be asked or given. It is, therefore, not a fact that the machinery and plant of "going concerns" is invariably the property of the tenant, and Mr. Morris was wrong in stating in his evidence in the Halstead case that such was the case.

There is no doubt that the great inequalities which exist in rating manufacturing works, are to be attributed to the fact, that works which are let together with the machinery contained therein, are rated on the rents paid for the works as a "going concern" by the tenant, and in ascertaining such rents the value of the machinery is included: whereas in the case of works, which are in the occupation of the *owners*, they are rated as *mere warehouses* for the machinery, and not as "going concerns," and the value of the machinery is not taken into account at all. As an illustration of the extent of such inequalities, it has been found in valuing, on a uniform principle the works in a union, that some of the works were overrated, whilst the increase in others varies from *nil* to ·1073 per cent.!!!

MACHINERY IN SCOTLAND RATEABLE BY STATUTE LAW.

It is said that in England, machinery is only rateable by "judge-made law," or by the decisions of the judges of the Supreme Courts. But in Scotland, machinery is rateable under Statute Law.

By 17 & 18 Vict., cap. 91* (An Act for the Valuation of Land and Heritages in Scotland), it is enacted as follows:—

Sect. I. The commissioners of supply of every county, and

* It is a significant fact that three years before the passing of this Act, the question of the "Rating of Machinery and Plant" had been before the superior Courts in England, and it would appear that Parliament intended to remove all doubts on the subject by legislating for Scotland.

the magistrates of every burgh in Scotland respectively, shall annually cause to be made up a valuation roll, showing the yearly rent or value for the time of the whole lands and heritages within such county or burgh respectively, and separately within each parish or part of a parish situated within such county or burgh respectively, and specifying in each case the nature of such lands and heritages, and the names and designations of the proprietors or reputed proprietors, and where they are tenants or occupiers, of the tenants and of the occupiers thereof respectively.

Sect. VI. In estimating the yearly value of lands and heritages under this Act, the same shall be taken to be the rent at which one year with another, such lands and heritages might in their actual state be reasonably expected to let from year to year.

Sects. XXXII. and XXXIII. Provides that from and after the establishment of valuations of the lands and heritages in Scotland under this Act, the prison assessment and other public assessments leviable on real rent to be levied upon valuations established by this Act.

Sect. XLII. The following words and expressions, when used in this Act, shall, in the construction thereof, be interpreted as follows, except when the nature of the provision or the context of the Act shall exclude or be repugnant to such construction (that is to say), the expression "lands and heritages" shall extend to and include all lands, houses, shootings, and deer forests, where such shootings or deer forests are actually let, fishing, woods, copse and underwood from which Revenue is actually derived, ferries, piers, harbours, quays, wharfs, docks, canals, railways, mines, minerals, quarries, coalworks, waterworks, limeworks, brickworks, ironworks, gasworks, factories, and all buildings and pertiments thereof, AND ALL MACHINERY FIXED OR ATTACHED TO ANY LANDS OR HERITAGES.

THE "USUAL WAY" OF CALCULATING THE ANNUAL VALUES OF LANDS AND HERITAGES IN SCOTLAND.

It will be seen from the following report of a recent appeal against an assessment, that the "usual way" of calculating the annual values of lands and heritages in Scotland is the "ordinary way" of letting lands with building and fixtures in Eng-

land and Wales, viz., interest on the capital invested, plus the rent of the land.*

VALUATION APPEAL COURTS.—LOWER WARD OF LANARKSHIRE.

The Lands Valuation Appeal Court for the Lower Ward of the County of Lanark was held in the Sheriff Court House, Glasgow, yesterday.

Whitefield Engineering Works, Govan.

Mr. Duncan, 109, Hope Street, appealed against a valuation of £535 being put on the engineering works of Messrs. Ross & Duncan, at Whitefield Road, Govan. The present rental was only £411, at which figure he thought the property should be entered in the valuation roll.

The Assessor stated that he had calculated the value in the usual way, viz., 7½ per cent. on the value, plus the feu-duty. The rental could not be taken as any criterion in that case owing to the relation that existed between the firm and the proprietor.

The appeal was repelled. And this principle has been confirmed by the Judges of the Superior Courts in Scotland.

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* In a case, in England, which recently came under the writer's notice, where a person agreed to purchase certain lands and buildings and make alterations and agreed to demise the same by lease, the lessee covenants to pay rent calculated at per centages on the '*cost*' of the land, buildings, and alterations. The word '*cost*' in the lease is defined to include *the cost of conveyance and the architect's commission on the alterations.*

ADVERTISEMENTS OF MANUFACTORIES, MILLS, &c., WITH MACHINERY, TO LET.

Cotton, Woollen, Bleaching and other Mills.

TO BE LET, LOWER GRANGE MILL, Accrington, containing 4,000 throstle spindles and preparations, now working.—Apply on the premises; or to Mr. J. KIPPAX, Parker-lane, Burnley.

TO BE LET, COTTON MILL, about 25,000 spindles, with room for 8,000 more, medium counts; or would take in a Practical Managing Partner.—Address E 58, at the printer's.

TO BE LET or SOLD, with immediate possession if desired, a COTTON SPINNING CONCERN, in the country, containing 10,000 throstle and mule spindles, now in full work.—Address T 39, at the printer's.

TO BE LET or SOLD, as a going concern, or in allotments, Union Mill, Milnsbridge, containing 17 sets of scribbling and condensing engines, with mules, looms, and finishing machinery to follow.—Apply to E. & G. DYSON BROS., 32, John William-street.

TO BE LET or SOLD, as a going concern, 500 LOOMS, with winding, beaming, and taping, in good condition.—Apply WILLIAM DUGDALE, Calde-vale, Burnley.

TO BE LET, a First-class WEAVING SHED, containing 125 looms and preparation, near the railway station, Chorley.—Address Mr. GILLETT, builder, Chorley.

TO BE LET, with immediate possession, or SOLD by private treaty, Capital Modern WEAVING SHED and MANUFACTURING PREMISES, known as Gorse Bridge Mill, situate in Blackburn, with steam power, mill gearing, shafting, piping, and the whole of machinery therein, comprising 600 patent power looms, 43½-in. to 48-in. reed space, and full preparing machinery. The loose articles can be taken at a valuation in the usual way.—Further particulars may be obtained on application to Mr. WILLIAM HEPPARD, chartered accountant, Richmond-chambers, Blackburn.

TO BE LET, or Sold, a Modern WEAVING SHED, known as German Mill, situate in Derby-street, Bolton, containing splendid new compound horizontal steam-engine, with sufficient boiler power, shafting, and 771 looms; excellent district for hands, and near to two railway stations; capital rooms for winding, warping, and warehouse; the whole in a good state of repair; will be sold cheap, or let at a rent of £1 per loom per annum for a term of years; facilities for purchasing afforded.—Apply, C. M. MERCHANT, Savings Bank-buildings, Bury.

TO BE LET, in consequence of the death of Mr. William Garside, the tenant, all that DOUBLING MILL, situate opposite the Ordsall-lane station, containing about 6,000 doubling spindles, 2-in. lift, 2¼-in. gauge; winding, warping, and gassing frames, reels, driving gear, utensils, &c., which can be had at a low valuation; the above premises are well adapted for the business, and can be had at a low rental.—For price and other particulars, apply to Messrs. LEECH, SON, & WHITEHEAD, auctioneers and valuers, Ashton-under-Lyne, and on Tuesdays and Fridays, at their offices, 14, Brown-street, Manchester; and as to rental, to Mr. HORATIO DAVIES, the mill adjoining.

BARN MEADOW MILL, Dukinfield, with the weaving sheds, steam-engines, boilers, main gearing, gas and other apparatus, and also the new buildings, engines, shafting, fixtures, and fittings.—For further particulars, apply to Mr. WRIGHT, 79, Corporation-street, Manchester.

THE CARDIGAN MILLS ESTATE, Leeds.—To be SOLD by Private Treaty, or would be LET, the first-class Freehold WOOLLEN MILL and PREMISES known as the Cardigan Mills, situate in the township of Headingley-cum-Burley, Leeds, together with the powerful engine, boilers, shafting, going gear, and fixtures belonging thereto. The estate comprises an area of 2 acres, 1 rood, 39 perches, and is exceptionally well situated, having a long frontage to the river Aire and Milford-place, close to the Kirkstall-road and to the tram-cars, and is also near to the Armley Station on the Midland Railway, besides being about twenty minutes' walk only from the passenger and goods stations, the Exchange, and the principle banks in Leeds. The mills are substantially built, admirably planned, and are almost completely fitted-up with machinery of the most improved description, which is in good order; and there is an inexhaustible supply of water on the premises. The mills are capable of being let off in separate floors if desired.—For further particulars, apply to Mr. W. E. HOLT, Solicitor, 7, Argyll-place, London; or Messrs. NORTH and SONS, Solicitors, East-parade, Leeds.

TO BE LET or SOLD, LIME BANK WORKS, Lime Bank-street, Ashton-road, lately occupied by the Lancashire Wadding Company. The building covers about 2,200 yards, and is fitted-up with boiler, engine, and gearing, in good working order. There is also about 600 yards of vacant land, available for extending the works or for cottages.—Apply to R. E. JONES, 33, Kennedy-street.

ALBION MILL, Enfield, Accrington, to be LET, with a portion of the looms and other machinery therein; the tenant will be required to take the other portion at a valuation; immediate possession may be had.—Apply to Mr. JOHN HAWORTH, Cotton Manufacturer, Oswaldtwistle; or Mr. GEORGE HAMPSON, Cotton Manufacturer, Church.

COMPLETE WOOLLEN MANUFACTORY TO LET, comprising five sets condensers, self actors, and box looms, situate near station, between Leeds and Bradford. Owner retiring.—Address, G 53, *The Yorkshire Post.*

BLEACHING AND PRINTING.—To be LET or SOLD, the LOW MILL WORKS, 2½ miles from Chorley, on the proposed railway to Bamber Bridge, with steam-engines, bleaching kiers, printing machines, and other fixtures and machinery; ten acres of land, good mansion, and some cottages. A large and unfailing supply of the purest water, which has been used both for power and other purposes.—Apply to Mr. SWAINSON, at Low Mill, and to view the works, on Saturday afternoons.

SUNNYSIDE PRINT AND BLEACH WORKS, RAWTENSTALL.—To be LET or SOLD, upon reasonable terms, these Excellent WORKS, as now occupied by the owners, Messrs. Butterworth and Brooks. The premises and machinery are in complete working order, and are also well adapted for a bleach-works, having an abundant supply of excellent water. Immediate possession can be had.—Apply to Messrs. BUTTERWORTH and BROOKS, 7, Charlotte-street; or to Messrs. SALE, SEDDON, HILTON, and LORD, Solicitors, 29, Booth-street, Manchester.

FELLMONGER'S WORKS and YARD to be LET, with working machinery, plant, &c., for foreign and English skins; several stoverooms for drying wool, cotton, &c.; large rooms for storage; situated at Kirkdale, near Liverpool. Immediate possession.—Apply to Mr. JOHN RIDGE, 15, Batavia-buildings, Hackin's Hey, Liverpool.

TO BE LET or SOLD, CRAGG DYEWORKS, Windhill, fitted-up with engine, boiler, shafting, and machinery; good water supply, and near to station and canal; within 2½ miles of Bradford.—Apply to EDWARD DAVIES, Engineer, &c., Thornton-road, Bradford, Yorkshire.

THE Proprietor of a Medium-sized MILL of modern construction and machinery, wishes to LET, at a very low rental, for a term of years, or take in active Managing Partner with some capital.—Address, M 147, at the Printer's.

FOUNDRY MILL, BLACK LANE, near BURY.—To be SOLD or LET, with early possession, all that well-arranged MILL and LOOM SHED, &c., known as Foundry Mill, Black-lane, near Bury, with powerful steam-engine, steam boiler, mill gearing, steam and gas piping, &c. Parties wishing to treat will have the option of taking 308 power looms, with the winding, beam warping, and slasher sizing machines, &c., at a valuation. N.B.—The above mill is well situated for hands and coal, is close to the railway station, and has a good supply of water. The looms and machinery are all nearly new, and in first-class condition.—To treat, apply on the premises; or to SAMUEL JACKSON, Auctioneer and Valuer, Bury.

Corn, Paper, and Saw Mills, &c.

BARMBY DUN, NEAR DONCASTER.—TO BE LET, with immediate possession, a STEAM CORN MILL, running seven pairs of stones, and replete with all modern improvements, together with a good dwelling-house and paddock adjoining.—COLLISON, LITTLEWOOD, & PARKIN, Solicitors, Doncaster.

TO BE LET, with immediate possession, a new STEAM CORN MILL, situate at Middlesbrough, having wharfage on the River Tees. There is every convenience for loading and unloading foreign and coastwise cargoes, and direct railway connection with the North-Eastern Railway. There are six pairs French stones, screens, silk dresser, and all the most modern appliances. The mill will be let on advantageous terms to a thoroughly practical business man. The population of Middlesbrough is upwards of 50,000. Applications, with references, to be made to F. C. BALL, Estate Office, Middlesbrough.

TO BE LET, HAVANNAH CORN MILL, about one mile from Congleton, Cheshire, recently fitted up with modern machinery throughout, and driven by a water-wheel of 20-horse power. Five pairs of stones, &c. Capacity, about 300 sacks of flour per week. Can be seen at work. —Apply, Mr. READE, solicitor, Congleton; or Mr. TROTTER, Church-street, Macclesfield; or SAMUEL FITTON & SONS, Macclesfield.

TO BE LET.—STEAM CORN MILL, Green-street, Ryde, driving three pairs of stones; complete machinery. Also dwelling-house and stable adjoining.—Apply to R. ROACH PITTIS, Solicitor, Newport, Isle of Wight.

SPALDING, LINCOLNSHIRE.

TO MILLERS AND OTHERS.—TO BE LET, at Michaelmas next, the extensive STEAM MILL and GRANARIES, situate in High-street, Spalding. A lease of 7, 14, or 21 years will be granted, and the property will be let upon very advantageous terms.

The premises, which cover an area of over two acres, have a frontage to the river Welland of 224 feet. The mill is fitted with the most modern machinery, comprising 40-horse power high and low pressure engine, boiler, 28ft. by 7ft. diameter, with mountings complete, 10 pairs of 4ft. French burr stones with exhaust attached, and 2 sets of elevators to the flour machine. There are two pairs of elevators for hoisting corn from the waggons, one French cylinder for cleaning offals, bran machine, sack windlass, steam flour jumper, and other appliances. There is also a large stive room fitted for drying purposes, and a large tower kiln, with patent dryer for drying damp corn, stables, lathe-room, blacksmith's forge, carpenter's shop, &c., &c.

The granaries are capable of storing several thousand quarters of corn. There is a commodious dwelling-house with large garden, and the whole forms very extensive and convenient business premises.

Spalding is the centre of a large corn-growing district, having unusually good railway facilities, five lines of railway running into it, and the river Welland is navigable for vessels of 100 tons burthen.—For further particulars, apply to S. & G. KINGSTON, Auctioneers and Estate Agents, Spalding.

HUNSDON MILLS, near WARE.—To be LET, this well-built FLOUR MILL, containing six pairs of stones, with the necessary silks, purifying and smutting machines, &c. Driven by a powerful overshot wheel, with a good supply of water, and auxiliary steam power. Water communication to all parts of London. Well-built dwelling-house, stables, and premises; good garden and orchard, with 18 acres of pasture ground. Possession can be had at once by arrangement with tenant.—All particulars may be had by applying to A. PHELIPS, Witham, Essex, or McKENSIE & SON, Auctioneers and Estate Agents, 1, Broad-street Buildings, London, E.C., and Hoddesdon, Herts.

TO BE LET, COLLEGE MILLS and LOWER BUDOCK MILLS, Cornwall.—In consequence of the present occupier being obliged to leave England on account of ill-health, the above Mills, which have been carried on by the family for upwards of 30 years, and now in full work, are to be let as a going concern.

College Mills, recently fitted throughout with the most modern machinery, contain six pairs French stones, three silk reels, two centrifugal silks, two purifiers, porcelain rollers, smutter, brush machine, and all necessary machinery for economizing labour and making a high-class flour with best returns. This Mill is driven by water (overshot wheel) and steam, separately or combined; engine (condensing), two 14-in. cylinders, combined, and about 46-horse power, new within the last 12 months.

Lower Budock Mills, on the same stream, contain three pairs French stones, smutter, brush machines, &c., driven by water power (overshot wheel).

Also large corn stores, with river frontage; stables, waggon-houses, offices, &c., with about five acres rich meadow land attached.

Penryn is situated on a tidal river; railway communication; two miles from Falmouth, and in the centre of a populous and thriving district.—For further particulars and information, apply to occupiers, JOEL & R. H. BLAMEY, Penryn, Cornwall.

SUN FLOUR MILLS, Waltham Abbey, Essex.—To LET, on Lease, or Freehold to be SOLD.—The mill contains five pairs of stones, Victoria smutter, two silk flour dressing machines, scrubber, elevators, wheat damper, &c., all in thoroughly good working order. The machinery is driven by a recently erected 16-horse power boiler, by Wentworth & Son, with a 30-horse power boiler, by Hodges, of Millwall. Capacity about 350 sacks flour per week. There is good dwelling-house, also stabling, on the premises.—Full particulars and cards to view can be obtained on application, by letter only, to CHARLES BROWN, Park-lane, Croydon.

WARWICKSHIRE.—To be LET, a capital WATER and STEAM CORN MILL; good supply of water, three pairs of stones, with all necessary machinery, in good condition, together with about 40 acres of good sound land.—For particulars, apply to J. J., Office of *The Miller*, 24, Mark-lane, London, E.C.

FAREHAM MILL TO BE LET.—Five pairs of stones. Tidal. —For description, apply at the Mill; and, as to contract, to the Agent, Cams Hall, Fareham, Hants. Rent, £100.

TO LET, a STEAM MILL, three pairs of stones, doing a good trade, eight miles from London, with Baking and Corn Dealing Business attached. Also a WINDMILL, with or without six acres of meadow land; 12 miles from London; well adapted for grist trade.—Apply, C. BALLS, Millwright, Steam Mills, Beacontree Heath, Romford, Essex.

TO BE LET OR SOLD, the VICTORIA FLOUR MILLS, Oldbury, Staffordshire, in the midst of a large population. The Mill is on the canal, and contains six pairs stones, four silks, two purifiers, driven by a pair of economically-worked engines. Good house, offices, stables, and outbuildings. The whole in excellent repair—Apply on the premises.

TO MILLERS and Others.—SPALDING, LINCOLNSHIRE. —To be LET, at Michaelmas next, the extensive STEAM MILL and GRANARIES, situate in High-street, Spalding. A lease of seven, fourteen, or twenty-one years will be granted, and the property will be let upon very advantageous terms. The premises, which cover an area of over two acres, have a frontage to the River Welland of 224 feet. The Mill is fitted with the most modern machinery, comprising 40-horse power high and low pressure engine, boiler, 28ft. by 7ft. diameter, with mountings complete; ten pairs of 4ft. French burr stones

with exhaust attached, and two sets of elevators to the flour machine. There are two pairs of elevators for hoisting corn from the waggons, one French cylinder for cleaning offals, bran machine, sack windlass, steam flour jumper, and other appliances. There is also a large stive room fitted for drying purposes, and a large tower kiln, with patent dryer for drying damp corn, stables, lathe room, blacksmith's forge, carpenter's shop, &c. The granaries are capable of storing several thousand quarters of corn. There is a commodious dwelling-house with large garden, and the whole forms very extensive and convenient business premises. Spalding is the centre of a large corn-growing district, having unusually good railway facilities, five lines of railway running into it, and the River Welland is navigable for vessels of 100 tons burden.—For further particulars, apply to S. & G. KINGSTON, Auctioneers and Estate Agents, Spalding.

TO BE LET, the MILL, No. 1, Nightingale-street, Strangeways, with or without machinery, viz., four hydraulic presses, two pair edge stones, disintegrator, and other machinery suitable for manufacturing patent cake for cattle, with 20-horse engine, boiler, and gearing. There is a large and valuable business connection already established, to which an incoming tenant would be introduced.—Apply to W. H. PRATT, Valuer and Estate Agent, 28, Brown-street, Manchester.

FINE PAPER MILL TO BE LET or SOLD, for £3,500: easy terms; 60 years' lease; on colliery and main siding; abundant spring and washing water; two machines, each double-crown, American and Fourdrinier, eight beaters; 150 high horse-power steam, 30-horse water; first-rate turbine, 12ft head.—Address C. E. R., *Advertiser* Office, Rugeley.

TO BE LET, SAW MILL and PACKING-CASE WORKS, with steam power and machinery, situate in Allum-street, Ancoats.—Apply Allum-street Mills, Ancoats.

TO SAW MILL PROPRIETORS AND OTHERS.—TO BE LET, or FOR SALE, the SAW MILL attached to the North of England Wagon Works at West Hartlepool, fitted with machinery capable of turning out from 30 to 40 sets of wagon scantling per week, and equally adapted for other work, such as planing, &c.—For further particulars, apply to W. T. WALTON, Secretary, North of England Wagon Co., West Hartlepool.

TO BE LET, with immediate possession, the JOINERS' SHOP, with machinery, late in the occupation of John Wharton, Lucy-street, Stretford-road. Apply B. GIBBONS, Estate Agent, Clarence Buildings, Booth-street.

Foundry, Iron Works, and Engineering.

TO BE LET, or SOLD, as a going concern, with immediate possession, the FOUNDRY known as Ellesmere Foundry, situate in Ellesmere-street, Leigh, Lancashire, now in the occupation of Mr. Andrew Townley, with the Machinery and Plant therein.—For further particulars, apply to Messrs. MARSH, SON, & CALVERT, Solicitors, 4, Doctor's Nook, Leigh, Lancashire.

TO BE LET, a FOUNDRY, 78ft. by 31ft., and Engineering shop, travelling crane, two cupolas, fan, rattler, sand mill, engine and boiler, large weighing machine, &c.; complete, in working order; modern construction.—Apply Britannia Foundry, Baslow-street, Beswick; or J. M. MOSS, Fairfield, Manchester.

TO LET or SELL, IRON FOUNDRY, Chapel-street, Huddersfield; every convenience to make 30 tons of castings per week; model room, two-stalled stable, dressing shop, office, and store-room; good yard, either with or without two good cottages adjoining. If sold, two-thirds of the money may remain on for a term of years at 4½ per cent. Good connection, and in working order. Cause of disposal, ill-health. Apply to W. ROWE, or Mr. W. SCHOFIELD, Accountant, Queen-street, Huddersfield.

TO BE LET, or SOLD, a Small Compact IRON FOUNDRY, with boiler, engine, cupola, fitting and smith's shop, small dwelling-house attached; to an energetic man this is an opportunity which rarely occurs, as it is well situated for business, close to the canal side.—Apply to E. FRANCE, Lamb Inn, Ashton-under-Lyne.

TO BE LET, the WADSLEY BRIDGE WORKS, situate upon the River Don, at Wadsley Bridge, in the Parish of Ecclesfield, comprising two forges and tilt, stable, and outbuildings, together with head and fall of water from the River Don of 8ft. 6in. For an eligible tenant the landlord would erect additional machinery suitable to the Sheffield trade.—Apply to R. HEBER RADFORD, High-court, High-street, Sheffield.

TO BE LET, with entry, in May, 1884, the very eligible premises, well and favourably known as the HAIGH FOUNDRY and BROCK MILL FORGE, most conveniently situated on the River Douglas, one mile from the town of Wigan, and with direct access by rail to all parts of the kingdom. The premises cover an area of about 14 statute acres, and include iron foundry, engine and boiler works, and forge, and with them are at present let two Houses and about twenty-five Cottages, together with stabling, &c., &c., the whole having been held for nearly fifty years past by the Haigh Foundry Company.—Further particulars may be obtained on application to Messrs. J. and R. BRIDGEFORD and SONS, Accountants, &c., 30, Cross-street, Manchester; ROBERT THOMPSON, Esq., Consulting Engineer, King-street, Wigan; Messrs. PEACE and ELLIS, Solicitors, Wigan; or to Mr. J. W. FAIR, Estate Office, Haigh Hall, Wigan.

CRADLEY.

TO BE LET, with immediate possession, the valuable CHAIN WORKS, situated at Four Ways, Cradley Heath, lately in the occupation of Messrs. George Yardley and Co., comprising lofty iron warehouse, 52ft. by 15ft., chain warehouse 44ft. by 18ft., office, store room, packing room, polishing room, store room over engine and boiler house, stabling (loft over); yard, two-stall stable therein; CHAIN PROOF-HOUSE 72ft. by 13ft., with 75-ton HYDRAULIC TESTING MACHINE and HEARTH blacking shops, japan store, black chain shop, &c., &c.—For terms and cards to view, apply to JAMES and LISTER LEE and SON, the Mart, 19, Cannon-street, Birmingham.

TO IRON AND METAL TUBE MANUFACTURERS, AND OTHERS.

TO BE LET on LEASE, with immediate possession, all those very important, extensive, and substantially-erected WORKS, known as the BIRMINGHAM PATENT TUBE WORKS, situated in London-street, Smethwick, near Birmingham, on a branch of the Birmingham Canal, close to the London and North-Western and Great Western Railways, and the Midland Iron and Coal District.

The WORKS comprise a lofty iron and metal mill, 203ft. by 182ft.; screwing shop, 132ft. by 92ft.; stay-screwing shop, 81ft. by 32ft.; fitting shop, 93ft. by 26ft.; engine house, extensive tube warehouses, two annealing shops; coppersmiths', carpenters', and smiths' shops; stores, foreman's and timekeeper's offices, yards, superior commercial and private offices, Manager's RESIDENCE, Garden, and every other convenience; the whole occupying an area of 13,898 square yards of FREEHOLD LAND.

The costly WORKING PLANT consists of a pair of 60-horse condensing beam engines, by James Watt and Co.; 14-horse horizontal engine; 5-horse vertical engine, three waggons and one Cornish boilers, five patent four-roll welding machines, furnaces and rolls, twenty bevelling, draw, and finning benches; twenty boring, cutting-off, facing, milling, screwing, and socketing machines; thirteen screw-cutting and turning lathes; four drilling, shaping, and coiling machines; two straightening plates, three pairs of metal rolls, mangle, four saws, four testing machines, three grindstones, vices, powerful driving gear, pulleys, &c.; twelve heating and annealing furnaces, weighing machines, &c.

The whole of the Plant has been judiciously arranged, and is capable of producing 100 tons of iron, steel, and metal tubes per week.

For orders to view, and to treat, apply to Messrs. JAMES and LISTER LEA and SON, surveyors, Auctioneers, Valuers, and Estate Agents, 19, Cannon-street, Birmingham.

IRONWORKS (superior and extensive).—To be LET, the FACTORY IRONWORKS, Tipton (Messrs. Barrows' Lease having just expired), containing two forges and two mills, twenty-six furnaces, two very powerful steam engines, and other usual machinery. The Works are most conveniently situated, having canal and railway accommodation, and are suitable for the manufacture of any description of iron, or may be converted into steel works. If not let as a whole, they may be divided.—Apply to Mr. EDWARD JONES, Oakwood, West Bromwich, Agent to Sir Horace St. Paul, Bart., the Proprietor.

BUFFERY FURNACE, DUDLEY, to be LET.—This Furnace has all modern appliances, gas apparatus, hot-air ovens, cupola, workshops, offices, stables, canal and railway accommodation, and is situated in the best and cheapest furnace coal district.—For terms, apply to Messrs. WARMINGTON and THOMPSON, Solicitors, Dudley; or to Messrs. DUNN, Netherton Colliery, Dudley.

ROLLING MILLS.—To be LET, with immediate possession, WICK WATER-POWER ROLLING MILLS, with Puddling and Scrap Furnaces, and never-failing supply of water; two miles only from Warmley Station on the Midland Railway.—Apply to Messrs. JACQUES and SON, Solicitors, Bristol.

TO ENGINEERS AND MACHINISTS.—TO BE LET, the Old-established ENGINEER'S and MACHINIST'S WORKS, known as St. Paul's Foundry, Blackburn, being fitted up with a complete working plant, including steam-engines, boilers, travelling cranes, lathes, and other tools necessary for carrying on the business of an engineer and machinist; possession may be had on November 1, 1882. Apply to WILLIAM SALISBURY & HAMER, Auctioneers; or Mr. H. S. WHALLEY, Solicitor, both of Blackburn.

RADCLIFFE.—To Engineers, Machinists, and others requiring good light ROOMS, with power, use of lathes, planing machines, and other tools.—J. SUTCLIFFE, 2, Brown-street.

Breweries.

FREEHOLD 4-qr. STEAM BREWERY and PLANT, and AERATED WATER FACTORY and PLANT, for SALE, or to LET, at moderate rent. Incoming about £500, or would sell with freehold premises and house at £1,500. There is a good opening for a private business and with free houses, and there is also a good Aerated Water Business, now carried on on the premises. This is an unusual chance to a brewer, &c., with a small capital. Satisfactory reasons for giving up business.—Apply to the Proprietor, Mr. GEO. KING, Midland-road, Wellingborough, Northampton.

TO BREWERS and OTHERS.—To be LET, with option of Purchase, the present proprietor retiring from the business, the BELL BREWERY, Frome, with two full-licensed houses attached. The above commodious and well-situated premises contain a 5-qr. plant, good and ample cellarage in capital condition, a 9-qr. malting, and a site adjoining adapted for the erection of another if desired. The business, which may be greatly extended, is at the present time being successfully carried on, and has been so conducted during the last half-century.—Full particulars on application to Mr. E. T. LEWIS, Brewery Auctioneer and Valuer, Bridewell-street, Bristol; or to the Proprietor, Trinity-street, Frome.

BREWERY, in Cheshire, to be LET on LEASE, fitted with a 12-qr. steam plant, together with a malting, and 14 licensed houses. The business has been allowed to fall off owing to neglect, but in the hands of an energetic man, having a capital of £2,000 or £3,000, a remunerative trade could be secured.—Apply to Messrs. COLLIER & BOWDICH, Brewery Estate Offices, 28, Moorgate-street, London.

SMALL BREWERY in a Northamptonshire Market Town. Rent, including plant, only £60 per annum. Incoming about £500.—Apply to Messrs. ALFRED THOMAS, PEYER, & MILES, Brewery Auctioneers and Valuers, 2, Adelaide-place, London-bridge, E.C.

TO BE LET, the MAYFIELD BREWERY, Tipping-street, Ardwick, with steam boilers, 40-barrel plant; good yard, stable, sheds, &c., all in good working order.—Apply, THOMAS CHESTERS' Executors, Ardwick Brewery.

BREWERY.—To be SOLD, or LET on LEASE, with early possession, a capital six-quarter BREWERY, with COTTAGE, stable, coach-house, store rooms, and spare LAND, situated in one of the principal districts, within two miles of Stephenson Place (out of the borough). The Plant, in working order, consists of engine and all necessary brewery fixtures and utensils.—For further particulars, apply to Mr. J. MOORE BAYLEY, Solicitor, 57, Colmore-row, Birmingham.

MISCELLANEOUS.

RUTHIN.—TO BE LET, from July, all that Old-established TANNERY, Tanyard, and Premises, with the pits, drying sheds, bark sheds, bark mills, saw pit, and offices, situate in the parish of Llanfwrog, and abutting partly on Mwrog-street and partly on Borthyn-street, containing in the whole 1,722 square yards, or thereabouts, and now in the occupation of Mr. John Jenkins, who has held the premises for the past 45 years.—Apply to R. M. PRESTON, Esq., Solicitor, Chester.

TO BE LET, the Best WHARF in Manchester; fitted-up office; 4-ton weighing machine, belonging to the tenant; and splendid storeroom; suitable for any purpose.—JOHN PENDLEBURY, Royal-street, Naylor-street, Oldham-road, Manchester.

TO BE LET, all that TANNERY, situate at Fartown, Pudsey; together with the machinery, warehouses, and outbuildings belonging thereto. Also the Dwelling-house and Cottages adjoining, lately in the occupation of Messrs. Titley and Co. Immediate possession can be given.—For rent and further particulars, apply to Messrs. CLARK and SON, Solicitors, 3, Bank-street, Leeds.

TO BE SOLD or LET, as a going concern, a complete HOSIERY PLANT, in good working order, with first-class connection. Capital required, about £5,000.—M. 131, at printer's.

TO BE SOLD or LET, the SHEPHERD MILL ESTATE, situate at Spotland, near Rochdale, consisting of fulling mill, with stove or drying-house, boiler-house, chimney, mill-dam, goit, reservoirs, with water-wheel, tenters, and other fixtures; and an excellent messuage or dwelling-house, with all necessary outbuildings; and the land thereto adjoining, comprising in the whole nearly eleven acres statute measure.—For price or rent and other particulars, apply to T. A. & J. GRUNDY & CO., Solicitors, 14, Union-street, Bury.

DRESS OR COLOURED GOODS.—TO BE LET, a Modern WEAVING SHED, &c., with or without looms, in a district well situated for weavers, or to weave on commission.—Address W., Box 119, Post-office, Manchester.

TO LET, TWELVE POWER LOOMS, with room and power. Spinning can be done on the premises if necessary.—Address, S., 61, *Mercury* Office.

TO LET, Cheap, Three Sets of CARDING MACHINES, MULES, room for looms.—Address, S., 40, *Mercury* Office.

TO BE LET, PREMISES, consisting of small enclosed yard, two buildings three stories, a building one story, two large dye-pans and dryhouse adjoining (with 15-horse engine, boiler, drums, and shafting), all situate in Hope-street, and lately occupied by Mr. Vause.—Apply to Mr. JOHN CUNNINGHAM, 9, Lovell-street, Leeds.

SILK FACTORY, at SANDBACH.—To be LET, the COMMONS FACTORY, a three-storyed SILK MILL, in the town of Sandbach, comprising mill-rooms, winding-rooms, warehouses, offices, and the usual buildings, with engine and boiler, shafting, and all modern machinery and utensils requisite for throwing. Immediate possession. The mill and machinery are in good working condition.—Apply to Mr. R. BYGOTT, Solicitor, Sandbach.

DYEWORKS, NEAR THE DAMS, MACCLESFIELD.—TO BE LET, all that DYE-HOUSE, with the steam-engine, boiler, and plant, as worked by the late Mr. Thomas Hobson. These works are most centrally situated for business, within ten minutes' walk of the railway stations. There is a good supply of water; a lease would be given to an eligible tenant.—Apply to HENRY TROTTER, House and Estate Agent, 4, Church-street West, Macclesfield.

TO BE LET, the old-established DYEWORKS, with the complete dyeing plant therein, situate at Lee Bridge, Halifax, now in the occupation of Messrs. G. and J. Pilling. Immediate possession may be obtained. For particulars apply to Box 98, Post-office, Halifax.

TO BE LET, on lease, all that compact and substantial stone-built STEAM CORN MILL, five storeys in height, called "Victoria Mills," situated at Skipton, Yorkshire, together with the adjoining offices, stables for six horses, and piggeries. The mill comprises one 40-horse power engine with Cornish boiler, eighteen pairs of French and two pairs of grey stones, three silk dressing machines, one wire-dressing machine, screens, bean-splitters, malt rollers, &c. (the low floor of the mill being used for malting purposes). It adjoins the Leeds and Liverpool Canal, from which grain can be discharged direct into the mill. The Midland Railway Station is distant only a few hundred yards from the mill.—Applications to treat for the same to be made to JOHN WILKINSON, Esq., Broughton, near Skipton; WILLIAM LAYCOCK, Esq., Woodville, Keighley; WILLIAM SLINGSBY, Esq., Carleton, near Skipton; or JAMES DUCKIT, Solicitor, 21, Tyrrel-street, Bradford.

TO CORN MILLERS.—Crofton Corn Mills, Blyth, TO BE LET, and entered on in May. The steam mill contains three pairs of French stones, fit with patent balances; Bovill's patent exhaust and cold blast, and silks; Childe's separator, attached to Smith's corn screen; elevators for corn and meal; and Smith's revolving dressing machine.; everything in working order. The windmill contains two pairs of French stones, one pair of grey stones, and dressing machine; also in working order. River frontage, connected by tramway, and coal depot in close proximity. Stables, lofts, and cottages as may be required. —Applications to be made to JOSEPH HODGSON, Shipbuilder, Blyth.

PHŒNIX MILL, Wakefield.—To be SOLD or LET, the PHŒNIX STEAM CORN MILL, situate on the bank of the Calder, and near to railway communication, containing twin engines of 30-horse power each, boilers, twenty-two pairs French stones, two pairs grey stones, and requisite going gear, in good working condition.—Apply to WAINWRIGHT, MANDER, & WHITHAM, Solicitors, Crown-court, Wakefield.

SAW MILL, &c.—TO BE LET, with immediate possession, the water-power SAW MILL, with HOUSE and turning machinery, and about five acres of GRASS LAND, late in Mr. Haywood's occupation at Forge Mills Station.—Apply COUCHMAN, WILMOTT, & COUCHMAN, 6, Waterloo-street, Birmingham.

RARE OPPORTUNITY.—TO BE LET, in the most central part of Manchester, a TIMBER YARD and SAW MILL in full working order, with excellent business. Rent only £150 per annum. Light stock, taken at valuation.—K. 120, at printer's.

BLAST FURNACES AND PLANT.—To IRON and STEEL MANUFACTURERS.—To be LET (in the Shropshire district), Three BLAST FURNACES, one of which has been recently and most substantially erected, with two circular calcining kilns, each 46ft. high, together with thoroughly efficient BLAST FURNACE PLANT and MACHINERY. The furnaces may, at a trifling expense, be made available for the manufacture of steel, for which there is now so great a demand. They are directly connected by short locomotive branch railways and sidings with the London and North Western and Great Western Railway systems, and are situated in an extensive colliery now in full operation, and from which supplies of coal and ironstone can be obtained at a moderate rate.—For particulars, apply to Mr. R. D. NEWILL, Solicitor, Wellington, Salop.

FOUNDRY.—To be LET, with immediate possession, the MITRE FOUNDRY, Bishop-street, Birmingham. These extensive premises have been occupied since 1844 by the late Samuel Baker, and possess every convenience for carrying on a large foundry business, or may be readily converted to any other purpose. Certain fixtures, including a steam engine and boiler, cupola and fan, shafting, &c., go with the premises.—For terms and orders to view, apply, Messrs. COLEMAN & CO., Solicitors, 77, Colmore-row, Birmingham.

ROLLING MILLS.—To be LET, with immediate possession, WICK WATER-POWER ROLLING MILLS, with puddling and scrap furnaces, and never-failing supply of water; two miles only from Warmley Station on the Midland Railway.—Apply to Messrs. JACQUES & SON, Solicitors, Bristol.

TO BE LET, the BRITANNIA MILLS, Sovereign-street, Leeds, with the beam and horizontal engines of 58-horse nominal power, four boilers, two chimneys, and weighing machine. The mills have a considerable frontage to Sovereign-street, and wharfage and landing stages to the river Aire, and were for some years in the occupation of Messrs. B. Stocks and Son, Paper Makers. For further particulars apply to FORD, EDDISON, and FORD, Solicitors, 70, Albion-street, Leeds.

TO BE LET or SOLD, an IRON FOUNDRY, with boiler, engine, cupola crane, fitting and smiths' shop, stove, stable, office, and house, containing in the whole 1,660 square yards; chief, £13 16*s.* 8*d.*; well situated for business, being near the railway and close to the canal side.—Apply, E. FRANCE, Lamb Inn, Ashton-under-Lyne.

TO BE LET.—WESTFIELD BREWERY, Retford, situated in a district rapidly developing, and containing a plant recently fitted with modern appliances for brewing 2,000 quarters malt per annum, offers an excellent opening for business to a practical man with adequate means. A good dwelling-house, with all suitable out-offices attached. For particulars, apply to Mr. FOX, 2, Bellevue-terrace, St. John's-hill, Leeds; or to Messrs. NEWTON & JONES, Solicitors, Retford.

BRICKWORKS.—To be LET, with immediate possession, the valuable BRICKWORKS, situated at Middleport, Burslem, in the county of Stafford, adjoining the main line of the North Staffordshire Railway, in the occupation of Messrs. Wigley and Shirley. The land contains 13A. 2R. 14P., and the works consist of three large making sheds, four ovens, engines, boilers, pug mills, clay rolls, tramways, and every modern convenience for the carrying on of an extensive business. The marls are believed to be the best in the district, and suitable for both blue and red goods.—For further particulars, apply to Messrs. PADDOCK and SONS, Solicitors, Hanley.

TANSEY GREEN BRICKWORKS, PENSNETT, near DUDLEY.—To be SOLD or LET, with immediate possession, the above old-established BRICKWORKS, with the whole of the PLANT, MACHINERY, and ERECTIONS thereon, Broad Guage Railways, STOCK-IN-TRADE, GOODWILL, and connections, now in full work, and carried on by Messrs, Woodall and Newey. The plant, machinery, and erections consist of a fifteen-horse power horizontal engine and boiler, with engine-house, boiler seating, and stack; five large kilns, three large brick-built drying stoves, shedding, &c.; incline and chain, eight-inch force pump to marl hole, two clay wagons, main line tramway and branches, connected with the Great Western Railway; powerful locomotive engine and six railway trucks, sundry presses, moulds, and other brickmaking materials; particulars of which may be had on application to Messrs. WOODALL and NEWEY, at the Works, Tansey Green; or from Messrs. BATEMAN and SON, Land Agents, Dudley.

TO TANNERS, FELLMONGERS, &c.—To be LET, upon LEASE, or SOLD, and entered upon at Lady-day, 1883, when the present lease expires, those eligible PREMISES, now and for upwards of forty years occupied as a tan yard, at Shipston-on-Stour, near Stratford-upon-Avon, consisting of a very convenient DWELLING HOUSE, large and productive Garden and Orchard, large TAN YARD, bark yard, and barn, fitted with steam engine, bark yard, and barn, fitted with steam engine, bark mill, pumps, &c., all in good repair, and with capacious drying rooms over. Shipston is in the centre of an excellent bark district, almost unopposed, and a large and profitable trade has been and is still carried on there. A line of railway connecting Shipston with the whole of the Great Western system has been obtained this session, and is to be connected immediately, so that there will be every facility for an advantageous extension of the present trade.—For further particulars and to treat, apply to Mr. R. C. SINCLAIR, 3, Adelaide-place, London-bridge, London, E.C.

TO QUARRY OWNERS, BUILDERS, &c.—An excellent STONE QUARRY, adjoining the station at Highley, on the Severn Valley Railway, with siding crane, and other valuable plant, to be LET, with immediate possession.—To view, apply to Mr. FRANCE, the School House, Highley; and for further particulars, to KEARY, WYLEY, and DE WEND, Bridgnorth.

LONDON: KNIGHT AND CO., 90 FLEET STREET.